19

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~380~~ 173

EDWARD H. GREEN AND HETTY H., HIS WIFE, APPELLANTS,

vs.

THOMAS MANDELL ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED DECEMBER 17, 1868.

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INDEX.

	Original.	Print.
Bill of complaint	5	1
Answer	14	7
Replication	36	22
Petition of H. H. Robinson	36-A	23
Order of court	36-C	24
Appointment of F. W. Palfrey special examiner	36-I	26
COMPLAINANT'S DEPOSITIONS.		
(Alphabetically arranged.)		
Adams, J. Q	449	338
Agassiz, L	418	314
Bartlett, F	444	334
Crapo, Wm. W	254	188
Crosman, J. C., 1st deposition	355	265
Crosman, J. C., 2d deposition	495	372
Driscoll, A. C	432	325
Eaton, W. H	241	178
French, C	224	165
Gerrish, V. R. T	149	108
Green, E. H	121	87
Holmes, O. W	492	369
Howland, P	42	30
Lowell, J. A	278	207
Mathiot, G	299	223

	Original.	Print.
Montague, E	40	28
Morse, G. H	171	125
Mullin, T. C	194	143
Palfrey, F. W	456	343
Prescott, O	82	60
Price, K. R	37	26
Pye, G	291	216
Robinson, H. H	52	37
Rowell, F	464	348
Spear, J. B	445	335
Stevens, C. E	452	340
Swett, S. W	454	341
Taber, E. S	47	34
Thompson, L. H	84	61
Walker, C. A	447	336
Whippple, J. A	462	346
Wilde, G. C	455	342
Willard, J. A	203	149
Woerd, C. V	476	357
PLAINTIFF'S EXHIBITS.		
Agreement as to exhibits shown experts	461	346
Montague, Electa, deposition of (Aug., 1865.)	500	376
Exhibit "F. W. P., 1"	86	62
Exhibit "F. W. P., 2"	87	63
Exhibit "F. W. P., 3"	88	64
Exhibit "F. W. P., 4"	91	66
Exhibit "F. W. P., 5"	92	67
Exhibit "F. W. P., 6"	94	69
Exhibit "F. W. P., 7"	95	69
Exhibit "F. W. P., 8"	99	72
Exhibit "F. W. P., 9"	111	81
Exhibit "F. W. P., 10"	112	81
Exhibit "F. W. P., 11"	113	82
Exhibit "F. W. P., 12"	115	83
Exhibit "F. W. P., 13"	116	84
Exhibit "F. W. P., 14"	116	84
Exhibit "F. W. P., 15"	117	85
Exhibit "F. W. P., 16"	118	85
Exhibit "F. W. P., 17"	119	86
Exhibit "F. W. P., 18"	148	107
Exhibit "F. W. P., 19," "20," "21," "22"	510	383
Exhibit "F. W. P., 22, Crapo"	277	206
Exhibit "F. W. P., 23, Crapo"	510	383
Exhibit signatures photographed	510	383
Exhibit tracings	511	384
Exhibit photographic illustrations	512	384
Exhibit A^1 to Mrs. Driscoll's deposition	443	334
Bill of revivor	36–D	24
Agreement	36–F	25
Decree	36–H	25
Appeal	36–H	26
Return of F. W. Palfrey, special examiner	512–A	385
Answer to bill of revivor	36–G	25
Appointment of R. C. Pitman special examiner	1070	785

DEFENDANTS' DEPOSITIONS.

(Alphabetically arranged.)

	Original.	Page.
Anthony, B. S	901	659
Benham, H. W	999	735
Bennett, E. H	591	442
Brown, E. H	631	472
Brownell, F. B	611	456
Brownell, Fred	687	509
Cary, A. C	867	637
Clark, A	905	662
Congdon, J. B	847	623
Comer, G. N	823	606
Curtis, J	663	494
Davis, A. H	579	433
Davis, W. F	859	632
Fish, S. A	683	507
Gavit, J. E	885	649
Gray, P	595	444
Gulliver, L	996	733
Hart, S	515	386
Horsford, E. N	1008	742
Howland, S. M., first deposition	639	477
Howland, S. M., second deposition	658	491
Hussey, H. H	707	523
Irish, B	715	529
Jackson, C. T	981	721
Lewis, A	671	500
Lincoln, S	809	597
Mandell, T	691	511
Montague, E	517	387
Mosher, H. S	675	503
Paine, J. E	779	576
Peirce, C. S	1032	761
Peirce, B	1038	765
Prendergast, J	1005	740
Penney, E	971	713
Phippen, jr., G	797	590
Putnam, C. A	817	602
Sawyer, G. A	934	685
Sisson, S. A	679	505
Smith, G. C	875	642
Southworth, A. S., first deposition	717	530
Southworth, A. S., second deposition	891	653
Tucker, C. R	627	469
Williams, J. E	767	567

DEFENDANTS' EXHIBITS.

Exhibit A, R. C. P	575	431
Exhibit B, R. C. P	575	431
Exhibit C, R. C. P	576	431
Exhibit D, R. C. P	576	432
Exhibit E, R. C. P	577	432
Exhibit F. R. C, P	589	441
Exhibit G, R. C. P	590	441
Exhibit H, R. C. P	659	492

	Original.	Print.
Exhibit I, R. C. P.	660	493
Exhibit J, R. C. P.	661	493
Exhibit J, (envelope)	662	494
Exhibit K, (envelope)	706	522
Exhibit M, (envelope)	846	623
Exhibit R. C. P., 53	657	490
Exhibit R. C. P., 54	902	660
Exhibit R. C. P., X	1036	764
Exhibit record of probate of will of Sylvia Ann Howland	1049	774
Exhibit will of E. M. Robinson	1054	777
Exhibit inventory of the personal estate of E. M. Robinson	1057	780
Exhibit R. C. P., 1 to 51, inclusive (bills of sale)	1060	782
Exhibit R. C. P., 52	1060	782
Exhibit R. C. P., 53, 54	1061	782
Exhibit photographic illustrations, Book 1, Vol. 1, 2	1061	782
Exhibit photographic illustrations, Book 2 to 30	1061	782
Exhibit R. C. P., Photographs 8, 9	1061	782
Exhibit R. C. P., Diagram 1, 2, 3, 4 (Horsford)	1061	782
Exhibit R. C. P., Diagram (C. E. Peirce)	1061	782
Exhibit R. C. P., Diagram Peirce	1061	782
Return of R. C. Pitman, special examiner	1062	782
Certificate of clerk	1071	786
Bond to party on appeal	1072	786

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, before the Honorable Nathan Clifford, associate justice, and the Honorable John Lowell, district judge, in equity:

EDWARD H. GREEN *et ux.*, complainants,
vs.
THOMAS MANDELL *et al.*, defendants.

4 The bill of complaint in this cause was filed in the clerk's office, on the second day of December, A. D. 1865, and was duly entered at the October term of this court, A. D. 1865, and is in the words and figures following, namely:

5 *Bill of complaint.*

To the honorable the justices of the circuit court of the United States for the first circuit within and for the district of Massachusetts:

Hetty H. Robinson, of the city, county, and State of New York, singlewoman, a citizen of said State, and of the United States, brings this her bill of complaint against Thomas Mandell, of New Bedford, in the State of Massachusetts, merchant, a citizen of said last mentioned State, and of the United States, as he is executor of the last will and testament of Sylvia Ann Howland, late of said New Bedford, singlewoman, deceased, and against Edward D. Mandell, George Howland the younger, merchants, and William A. Gordon, physician, all of said New Bedford, citizens of Massachusetts, and of the United States, as they are trustees, and residuary legatees, under the will of the said Sylvia Ann, and thereupon your oratrix alleges as follows:

First. That she was the niece and sole heir-at-law of the said Sylvia Ann, by whom she was educated and brought up, and with whom she lived till within a few years—the said Sylvia Ann taking the place, and performing the duties of her sister, the mother of your oratrix.

Secondly. That in the month of September, A. D. eighteen hundred and sixty, your oratrix was possessed in her own right of property derived from her mother. At that time, the said Sylvia Ann was at variance with the late Edward Mott Robinson, the father of your oratrix, and was desirous to exclude him from the possibility of inheriting, by will or otherwise, from your oratrix, any part of the property of your oratrix, so derived from her said mother, and also, in case your oratrix should survive the said Sylvia Ann, any part of the property which might be derived to your oratrix from her, the said Sylvia Ann, and to that end requested your oratrix to
6 make a will so that in case of her decease before her father,

he should not in any manner, by will or otherwise, inherit any part of said property, and promised that if your oratrix would comply with such request, she, the said Sylvia Ann, would make her will in favor of your oratrix, it being agreed that their said wills were to be exchanged, and each was to have possession of the will of the other, and neither was to make any other will without notifying the other, and returning the other's will; and thereupon, on the nineteenth day of said month of September, your oratrix, at the request of the said Sylvia Ann, and contrary to her own inclination, but in accordance with her promise, and relying on the said promise of the said Sylvia Ann, did make a will by which all the property she then had, or might acquire, was given and devised to her issue, if any, and in default thereof, to charitable uses, and did exclude her father from all benefit from said will, as specially requested by the said Sylvia Ann, so that in the event of her decease before her said father, he would not, by inheritance or otherwise, be entitled to her property, or any part of it; that this will was drawn under the special direction of the said Sylvia Ann, was signed by your oratrix, duly attested by three witnesses in her presence, and delivered to the said Sylvia Ann, by whom it was kept during her lifetime, and among whose papers it was found after her decease, a copy whereof being hereto annexed, is referred to as part of this bill, and at the same time, in conformity with her said promise, the said Sylvia Ann caused a draft to be made of her own will, the date whereof was left blank, and the execution whereof was postponed, because of the belief which both the said Sylvia Ann and your oratrix entertained, being unadvised by counsel, that the later a will should be executed, the more operative it might be; but with the clear understanding that the will so drawn should be executed by the said Sylvia Ann, and delivered to your oratrix under the agreement aforesaid, whenever your oratrix should request her so to do.

Thirdly. And your oratrix further shows, that afterwards, in accordance with her promise aforesaid, the said Sylvia Ann, being requested so to do by your oratrix, did, on the eleventh day of January, eighteen hundred and sixty-two, duly sign and execute the aforesaid draft of her last will, in presence of three witnesses who subscribed their names thereto as witnesses in her presence, a copy
7 whereof being hereunto annexed, is referred to as a part of this bill; and before signing the said will, the said Sylvia Ann signed the paper writing, called therein, "the second page of this will," which last-mentioned paper writing was attached to the said will of the said Sylvia Ann before the said will of the said Sylvia Ann was signed by the said Sylvia Ann; a copy whereof being hereto annexed, is referred to as part of this bill; and thereupon the said Sylvia Ann, in further execution of her aforesaid promise, did deliver to your oratrix the last-mentioned will and paper writing attached thereto, and the same has ever since remained in the possession of your oratrix, and the aforesaid will of your oratrix was never returned to her, nor was she at any time or in any way notified that the said Sylvia Ann had made, or was about to make, any other will,

nor did your oratrix make any will other than the will delivered to the said Sylvia Ann as aforesaid, nor did she at any time revoke the same, and in reference to the statement in the said paper writing annexed to the said will, "excepting about one hundred thousand dollars in presents to my friends and relations," your oratrix shows, that at the time the said will and paper writing were delivered to your oratrix as aforesaid, your oratrix promised the said Sylvia Ann to distribute, to the amount of about one hundred thousand dollars, out of what your oratrix would receive by the said will of the said Sylvia Ann, to and among such persons, and in such sums, as the said Sylvia Ann might designate, and the said Sylvia Ann did thereafter designate certain persons as beneficiaries accordingly.

Fourthly. That notwithstanding her, promises and agreements as aforesaid, the said Sylvia Ann did make another will bearing date the first day of September, A. D. eighteen hundred and sixty-three, and a codicil bearing date the twenty-eighth day of November, A. D. eighteen hundred and sixty-four, which purport to give a large part of her property to divers persons and corporations, and devised the residue of her estate to the said Edward D. Mandell, George Howland the younger, and William A. Gordón in trust to pay the income thereof to your oratrix during her life, and made no other provision for her benefit and none for her issue, and afterwards deceased possessed of large real and personal estates.

Fifthly. That no notice of said last-mentioned will was given to your oratrix by the said Sylvia Ann during her lifetime, and
8 the existence thereof was not known to your oratrix till after her decease, and your oratrix charges by way of evidence that on one occasion when advised by the said Gordon to make a will, the said Sylvia Ann stated to the said Gordon in substance as follows, viz: "I had rather not make a will if I could help it on account of Hetty," (meaning your oratrix;) "I have been obliged to promise her that I would not make a will without letting her know it." And on another occasion in substance as follows, viz: "That she would make a will if it were not for this pledge or promise to Miss Hetty," (meaning your oratrix.) And your oratrix prays that the said Gordon may answer and set forth whether the said Sylvia Ann made the statements aforesaid, and if so, when, and that the other defendants may answer and set forth to the best and utmost of their belief whether they do not believe that the answer of the said Gordon as to the statements of the said Sylvia Ann to himself is true.

Sixthly. That the said Sylvia Ann died on the second day of July last past, and her said last-mentioned will was presented for probate in the county of Bristol, in the State of Massachusetts, by Thomas Mandell, the executor therein mentioned, and said will was admitted to probate, and the said Thomas Mandell appointed executor thereof, and the said Edward D. Mandell, George Howland, and William A. Gordon became trustees thereunder, and that the said Edward Mott Robinson died on the fourteenth day of June last past.

Seventhly. That by reason of the promises and agreements aforesaid, the said Sylvia Ann was bound in equity and good conscience

not to make the last-mentioned will or revoke her aforesaid will so delivered to your oratrix without notifying your oratrix and returning the will made by her as aforesaid, that no such notice or return were ever made, and that the personal estates in the hands of the executors, and the real estates devised to the residuary legatees are bound by the said contract of the said Sylvia Ann, and that your oratrix is entitled to receive from the said Thomas Mandell an account, transfer, and payment of all and singular the personal estates of the said Sylvia Ann, and from the said Edward D. Mandell, Howland, and Gordon an account and conveyance of all the real estates of which she died seized and possessed. And your oratrix prays that the said Thomas Mandell may be declared to hold all and singular the said personal estates in trust for your oratrix, and that the
9 said Edward D. Mandell, Howland, and Gordon may be declared to hold all and singular the said real estates in trust for your oratrix, and that they may be decreed to account with her for all and singular the interest, dividends, rents, and profits by them respectively received, and to assign, transfer, convey, and deliver all and singular the said real and personal estates and all income received therefrom to your oratrix, and that she may have such other relief in the premises as the nature of her case requires.

To the end, therefore, that the said defendants may, if they can, shew why your oratrix should not have the relief hereby prayed, and may upon their several oaths, and according to the best of their knowledge, information, remembrance, and belief, full, true, and perfect answer make to all and singular the premises:

May it please your honors to grant unto your oratrix a writ of subpœna directed to the said Thomas Mandell, executor of the will of the said Sylvia Ann Howland, and to the said Edward D. Mandell, George Howland the younger, and William A. Gordon, named as residuary legatees and trustees therein, commanding them at a certain time and place to appear before your honors to make answer in the premises, and to stand to, abide, and perform such order and decree as to your honors shall seem meet.

HETTY H. ROBINSON.

B. R. CURTIS, *of Counsel with Complainant.*

10 Be it remembered, that I, Hetty H. Robinson, of New Bedford, in the county of Bristol and commonwealth of Massachusetts, of lawful age, and sound and disposing mind and memory, do make, publish, and declare this my last will and testament, in manner following, to wit:

First. In case I shall have any issue, children, or grandchildren, living at the time of my decease, I give, bequeath, and devise unto such issue one-half of all my property and estate of every description, real and personal, to them and their heirs forever; and in case all said issue shall be in equal degree—that is, all children or grandchildren—they shall take equally, otherwise they shall take by right of representation.

Second. The other half of my said property and estate, I give, bequeath, and devise unto Edward Mandell, Abner Davis, and Benjamin Irish, of said New Bedford, their heirs and assigns and successors in said trust as trustees for the following trusts and purposes, to wit: That the said trustees shall invest the said property in some safe stock, mortgages, or other safe and secure manner, according to their best judgment, and shall receive the interest and income of the same, and shall pay over the same annually to my children equally during their lives; and upon the decease of any child, his or her share of said trust fund shall be paid over to his or her children in equal shares; but in case such child shall leave no children or issue living at his or her decease, then said child's share shall go to my other children, and the children of any deceased child.

And in case either of the above-named trustees shall decline to accept said trust, or shall decease or resign before the objects thereof are accomplished, the other trustees shall fill said vacancy by the appointment of another person in his place, who shall have and possess all the rights and powers of a trustee herein appointed, and this shall be done from time to time as vacancies occur till the objects of said trusts are accomplished.

Third. But in case I shall decease without leaving children or issue living at my decease, then I give, bequeath, and devise all the rest, residue, and remainder of my said property and estate of every description to the Home for Children located in the city of New Bedford. By property or estate, I mean what I have now and what I may have before my decease.

11 Lastly. I do hereby nominate, constitute, and appoint Edward Mandell, Abner Davis, and Benjamin Irish, of New Bedford, executors of my last will and testament.

In witness whereof, I have hereto set my hand and seal this nineteenth day of September, in the year of our Lord one thousand eight hundred and sixty.

(Signed) HETTY H. ROBINSON, & A SEAL.

Signed, sealed, published, and declared by the said Hetty H. Robinson as & for her last will and testament in presence of us, who, at her request and in her presence, have hereto set our names as witnesses.

(Signed) PELEG HOWLAND, & A SEAL.
EDWD. S. TABER, & A SEAL.
BENJ. MITCHELL, & A SEAL.

12 Be it remembered, that I, Sylvia Ann Howland, of New Bedford, in the county of Bristol and commonwealth of Massachusetts, of lawful age, and of sound and disposing mind and memory, do make, publish, and declare this my last will and testament, in manner following, to wit:

First. I give and bequeath unto my niece, Hetty Howland Robinson, all my real and personal estate, goods, and chattels of every description, including the Round Hill farm, and everything thereon,

house on the corner of Water and School and First, and everything on and belonging, land and buildings, to her, the said Hetty H. Robinson, and her children and assigns forever.

Second. If the said Hetty H. Robinson dies without children or grandchildren before me, I wish it to go to the charity schools and institutions named in will of 1850—3d month, 4th day—with these trustees—Thomas Mandell, Cornelius Howland, Henry Taber.

Third. I appoint Thomas Mandell, of New Bedford, executor of this my last will and testament, also executor of the 2d page of this will.

In witness whereof, I have hereto set my hand and seal this eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-two.

(Signed) SYLVIA ANN HOWLAND, & A SEAL.

Signed, sealed, published, and declared by the said Sylvia Ann Howland as and for her last will and testament in presence of us, who, at her request and in her presence, have hereto set our names as witnesses.

(Signed) PELEG HOWLAND, & A SEAL.
KEZIA R. PRICE, & A SEAL.
ELECTA MONTAGUE, & A SEAL.

13 Be it remembered, that I, Sylvia Ann Howland, of New Bedford, in county of Bristol, do hereby make, publish, and declare this the second page of this will and testament made on the eleventh of January in manner following, to wit: hereby revoking all wills made by me before or after this one—I give this will to my niece to shew if there appears a will made without notifying her, and without returning her will to her through Thomas Mandell as I have promised to do. I implore the judge to decide in favor of this will, as nothing would induce me to make a will unfavorable to my niece, but being ill and afraid if any of my care-takers insisted on my making a will to refuse, as they might leave or be angry, and knowing my niece had this will to show—my niece fearing also after she went away—I hearing but one side, might feel hurt at what they might say of her, as they tried to make trouble by not telling the truth to me, when she was here even herself. I give this will to my niece to show if absolutely necessary, to have it, to appear against another will found after my death. I wish her to shew this will, made when I am in good health for me, and my old torn will made on the fourth of March, in the year of our Lord one thousand eight hundred and fifty, to show also as proof that it has been my lifetime wish for her to have my property. I therefore give my property to my niece as freely as my father gave it to me. I have promised him once, and my sister a number of times, to give it to her, all excepting about one hundred thousand dollars in presents to my friends and relations.

In witness whereof, I have set hereto my hand and seal this elev-

enth of January, in the year of our Lord one thousand eight hundred and sixty-two.

(Signed) SYLVIA ANN HOWLAND, & A SEAL.

14 On the fifth day of February, A. D. 1866, the following answer was filed, namely:

Answer.

The answer of Thomas Mandell and of Edward D. Mandell, George Howland, jr., and William A. Gordon, defendants, to the bill of complaint of Hetty H. Robinson.

The said Thomas Mandell severally answering, and reserving to himself, at all times all right of exception to the said bill of complaint, or to any part thereof, for answer thereunto or to so much thereof as this defendant is advised is material or necessary for him to make answer thereto, saith:

That it is true that the said Hetty H. Robinson, complainant, was the niece and sole heir-at-law of Sylvia Ann Howland in said bill of complaint named.

But this defendant upon his information and belief denies that the said Hetty was educated or brought up by the said Sylvia Ann, or that she lived with her until within a few years, or that the said Sylvia took the place or performed the duties of her sister, the mother of the complainant.

And this defendant upon his information and belief avers the truth to be that the said Hetty H. was born in 1834; that from her infancy and until she was nine or ten years of age she resided with her grandfather, Gideon Howland, and was under the charge and care of Ruth Howland, the mother-in-law of said Gideon; that after this and until the year 1860 she was part of the time at school in Sandwich and Boston, to which she was sent by and at the expense of her father, and for the remainder of the time resided with her father and mother at New Bedford; that after the death of her mother and until the year 1863 she resided with the said Sylvia A., and from that time with her father, in New York, and until his death, in June, 1865; that from infancy until she arrived at full age, her parents exercised parental control and guardianship over her, and that,

15 though the said Sylvia A., who was her nearest maternal relative, performed the part of her adviser and friend, she did not, at any time, take the place of, or perform the duties of mother.

And this defendant, further answering, saith, that he admits that in September, 1860, the complainant was possessed of certain property derived from her mother; and he says that the same consisted of a certain house and lot of land in New Bedford, where the parents of complainant had lived; that her mother, the said Abby S. Robinson, died in February, 1860, possessed of said real estate, valued at about $8,000 (eight thousand dollars) or $10,000, (ten thousand dollars,) and of other real estate of the value of about $23,000, (twenty-three thousand dollars,) of which said Edward M. Robinson became

seized as tenant by courtesy, and of personal estate to the amount of about $120,000, (one hundred and twenty thousand dollars;) that all of said property, excepting the real estate last named, was in the possession of this defendant as trustee. And this defendant avers that said Edward was at that time of the age of sixty years, and that immediately after the death of her mother, the said Hetty, who was then of full age, asserted a right to said personal property against her father, who claimed to be heir-at-law of the said Abby S. And said defendant says that said Hetty and her father were at variance on account of said property; that this defendant as trustee, under the advice of counsel to whom the cause was mutually submitted, was obliged to concede the right of the said Edward to the same; and that the whole amount of said personal property was, accordingly, paid over to him by this defendant; that the said Hetty was much offended at this result, and, as this defendant is informed and believes, that the said Hetty had serious personal difficulty and controversy with her father, and repeatedly declared that she would make her will and keep her father from receiving any portion of the property she had derived from her mother.

And this defendant, upon his information and belief, says, that the determination of the said Hetty H. Robinson, and her feelings in respect to the disposition of said property derived from her mother were not, at any time during the life of her father, or thereafterwards, changed.

And, further answering, this defendant saith, that he does not know and cannot state upon his information and belief, whether any variance existed between said Sylvia Ann and the said Edward
16 M. Robinson, as in said bill alleged; but he denies, upon his information and belief, that any personal difference or controversy existed between them, or state of feeling which would have induced said Sylvia Ann to interfere, in any way, concerning the relations of said Hetty to her father, or the disposition of the property she had received from her mother.

And the defendant cannot on his knowledge, information, or belief say, whether said Sylvia at any time requested the complainant to make a will, so that her father should not inherit any part of her said property; or whether said Sylvia at any time promised that if complainant would comply with said request, that the said Sylvia would make her will in favor of said complainant; or whether it was agreed that their said wills should be exchanged; or whether each was to have possession of the will of the other; or whether neither was to make any other will without notifying the other, or returning the other's will; or whether thereupon in the month of September, as in said bill is alleged, or at any other time, the said complainant, on such request, or contrary to her own inclination, or in accordance with her promise, as alleged, or relying on the promise as in said bill alleged, made a will by which the property she had or might acquire was given to her issue, if she should have any, or otherwise to charitable uses; or whether by said instrument she designed or intended to exclude her said father from all benefit from said will

or property, so that if she died before her father, he would not, by inheritance or otherwise, be entitled to her said property, or any part of it; or whether the said will of said complainant was drawn under the direction of said Sylvia, or was duly signed by the complainant, or attested by three witnesses in her presence; or whether the same was delivered to the said Sylvia, or kept by her during her life; or whether it was found among her papers after her decease; or whether the copy annexed to bill is a copy of said will; or whether said Sylvia promised to make, or did at any time pursuant to such promise or otherwise cause to be made, a draft of her own will, leaving the date thereof blank, or postponing the execution thereof, as averred in said bill; or whether the said Sylvia agreed or undertook that such will should be executed by her, or delivered to the complainant upon her request; but the said defendant, upon his information and belief, denies each and every of said averments in said bill of complaint contained.

17 And this defendant, upon information and belief, says, that if any will was made by the complainant with the view and purpose of excluding her father from taking, by will or inheritance, the property derived to the complainant from her mother, it had its origin and motive in the feelings and disposition heretofore stated, and not from the causes, motives, or agreement in the bill of complaint set forth; and that, if the same was delivered to the said Sylvia A., or left in her possession, it was with a view to the safe keeping of the same, and for no other reason;

And this defendant further says, that he had the care and management of all the estate of said Sylvia from the year 1835 until the death of said Sylvia, July 2d, 1865, and had continued and free communication with her during said time, and that said Sylvia did not at any time express an intention or desire that said Hetty H. Robinson should have the whole of her estate, but, on the contrary, that at different times before the year 1860, the said Sylvia had made several wills, disposing of her property in ways other than giving the whole or principal part to the said Hetty—one or more of which wills, as this defendant is informed and believes, have been procured by, and are now in the possession of, the complainant.

And this defendant, further answering, saith that he does not know, and cannot, upon his information and belief, state whether in January, 1862, or at any other time, as averred by the complainant, the said Sylvia executed the paper writing, or whether the same was duly attested, a copy whereof is annexed to said bill of complaint, and called the will of Sylvia Ann Howland; or whether she signed the paper writing therein said to be referred to and called the "second page of this will;" or whether the said Sylvia at any time subscribed her name to the writing contained upon "second page," so called:

But, according to his information and belief, this defendant denies that the said Sylvia signed "second page," so called, with any knowledge or understanding of its contents, as would in law or equity bind her by the statements, recitals, or provisions therein contained.

And this defendant says, in evidence, that the said Sylvia could not have signed the same with an understanding of the contents thereof; that the recitals and statements therein made, as to facts and as to the purposes, fears, wishes, and feelings of the said Sylvia were untrue in fact, and opposed to, and in conflict with, those entertained and frequently expressed by the said Sylvia at and about the time when said paper purports to have been made and signed by her.

18

And this defendant cannot admit, but upon his information and belief denies, that said paper writing called the "second page," was at any time attached to said alleged "will," as in said bill of complaint is averred; or that said Sylvia delivered to said complainant said "will" and "paper writing," as in said bill stated; or that the same had ever since remained in her possession; or that said will of the complainant was never returned to her; or that she was not at any time or in any way notified that said Sylvia had made, or was about to make, any other will; or that complainant made no will other than in the bill averred to have been delivered to said Sylvia; or that she did not at any time revoke the same; or that at any time, as is averred in said bill, the complainant promised said Sylvia to distribute the sum of about $100,000, (one hundred thousand dollars,) or any other sum, among such persons and in such sums as said Sylvia might designate, or that said Sylvia did thereafter designate certain persons as beneficiaries accordingly.

And this defendant, further answering, says that the said Edward M. Robinson, father of the complainant, deceased June 14th, 1865, and during the life of said Sylvia; that the complainant was present and with him at the time of his decease; and that before his said decease the said Hetty, as this defendant is informed and believes, was notified and informed that the said Sylvia Ann had made a will in the year 1863; and the defendant respectfully submits to this honorable court, if any consideration existed for said contract as averred, that upon the decease of said Edward the whole consideration of the alleged compact or agreement, even as the same is averred and set up by the complainant, had wholly failed and become void; and that any further, or other or formal notice from said Sylvia to the complainant would have been vain and profitless.

And the defendant, further answering, saith that before the death of said Edward M. Robinson, the said Sylvia declared to said defendant, in the presence of those near her, that she had made such a will as she wished to make, and had made him executor thereof, and said to the defendant, "and you must see that it is carried into effect."

19

And further answering, this defendant admits that it is true that the said Sylvia did make a will on the first of September, 1863, and a codicil thereto on the 24th of November, A. D. 1864, as in said bill truly averred, and for greater certainty as to the provisions thereof, this defendant annexes hereto copies of said will and codicil, and prays that the same may be deemed a part of this answer.

And said defendant says, that the parties benefited by said will are many of them relatives of said Sylvia, and in need of relief, and were long held and regarded by her as parties to be beneficiaries under her will, and that some of the charities by her provided for in said will were, and had long been, objects of her regard and bounty.

And the defendant says, that the part of her estate given to divers persons and corporations, as averred by said bill, amounted to the sum of $1,012,100, (one million twelve thousand one hundred dollars,) or thereabouts, and the residue of her estate devised to trustees, the income whereof is payable to the complainant during her life, amounted to about the sum of $1,132,929, (one million one hundred and thirty-two thousand nine hundred and twenty-nine dollars.)

And this defendant submits to the honorable court that the pretended compact, contract, or agreement set up by said complainant in her bill, even if the same were true, and could be proved as averred, was of no binding effect; that the same was without any consideration which this court would regard; that said averred contract, compact, or agreement pretended to have been made between the daughter of said Edward Mott Robinson and said Sylvia Ann Howland, the sister of her mother, whereby the said Hetty agreed to exclude her father from the benefit of her estate in any possible contingency, as said Hetty in her bill avers, was inofficious, against good morals and public policy, and cannot be rightfully pleaded, asserted, or set up in this honorable court.

And especially was this agreement void under the laws and as against the policy of this commonwealth, by force of which said Edward M. Robinson would have been sole heir to the complainant if she had deceased intestate, and without husband or issue; and which laws recognize and enforce the legal duty of the child to support the parent, as well as the parent the child.

And, further answering, this defendant says, that at the time when said alleged compact, contract, or agreement is averred to have been made, the complainant was possessed of real estate valued at $8,000 (eight thousand dollars) or $10,000, (ten thousand dollars,) and of a reversionary right after the expiration of a life estate in her father, in real estate, the whole value of which was about $23,000, (twenty-three thousand dollars;) and that the said Sylvia was possessed in her own right of estates, real and personal, of the value of about two millions of dollars; and that by the terms of said pretended contract, as averred, no benefit or advantage could accrue to said Sylvia.

And he submits to the honorable court that the said pretended agreement was unequal, inequitable, unjust, and unconscionable to such degree that it cannot rightfully claim the consideration or favor of this court.

And this defendant, further answering, saith that said Edward M. Robinson died testate during the life of said Sylvia, to wit, on the fourteenth day of June, 1865, leaving large estates, real and personal, to the value of about the sum of six millions of dollars, and that the whole thereof, excepting only some inconsiderable legacies,

amounting to thirty-one thousand dollars, was given absolutely, or in trust, for the benefit of the complainant.

And this defendant respectfully submits, that by the death of said Robinson, during the life of said Sylvia, whereby it became impossible that his daughter, the said Hetty, could make her father the recipient, by will or otherwise, of any part of her estate, the said pretended compact, contract, or agreement, as the same is averred, if it could otherwise be operative, became of no force, effect, or value; and that the said will of the said Sylvia, and codicil thereto, last made and by her executed, or the estate thereby devised, and the legacies thereby given, cannot and ought not, in law or in equity, to be in any way thereby affected, and that the said Sylvia had full and perfect right to make the same.

And, further answering, the defendant says and submits to the court, that the said pretended contract or agreement is so vague, uncertain, and indefinite, that it cannot and ought not to be enforced at law or in equity.

And, further answering, the defendant saith that the paper writing set forth in the bill of complaint as the last will and testament of the said Hetty, a copy of which is annexed to said bill, did not conform to, or carry out, the pretended agreement in said bill set forth; and said will was not so drawn, nor were the provisions thereof
21 so framed as to exclude the said Edward from the possibility of inheriting, by will or otherwise, the property of said Hetty, derived from her mother, or which might be derived to the said Hetty from the said Sylvia, in case the said Hetty survived the said Sylvia Ann; but that, notwithstanding the said pretended will, the said Edward might well have inherited and taken both classes of said property.

And this defendant, under advice of counsel, further saith, that the provisions of said paper writing, alleged to have been made as and for the will of said Hetty, contemplate marriage of the said Hetty; and that by her marriage any will made by her would be revoked and become of no effect; and so the defendant submits to this court that the pretended contract or agreement, even if the same can be proved as averred, ought not to be enforced in equity against the will and codicil of said Sylvia, or against the defendant as the executor of the same.

And, further answering, this defendant, upon his information and belief, denies that no notice of said intended will was given to or received by said complainant, although it may be true, for aught this defendant knows to the contrary, that no such notice was given directly by said Sylvia, but the defendant denies that the existence of such will was unknown to the complainant till after the decease of said Sylvia, and says that the complainant was informed in the summer of 1864, that the said Sylvia had made a will; and this defendant submits that by the terms of said pretended agreement the said Sylvia was not required to give notice before the fourteenth day of June, 1865, of the making of her said will, but might, in compliance with said agreement,

as averred, have given such notice thereafterwards with the same effect as if the same had been previously given.

And the defendant says that the death of said Robinson on the 14th day of June fully absolved said Sylvia from all duty or obligation to give the notice referred to.

And, further answering, the defendant saith, that by such death, the said Hetty H. Robinson, notwithstanding such pretended agreement, had full, ample, and unrestricted right to make any possible disposition of her property and estate consistent with the rules of law.

And this defendant, further answering, saith, that the paper writing set forth in the complainant's bill, as the will of said Sylvia, and purporting to be executed by her on the 11th day of January,
22 1862, was not made in conformity to the pretended agreement set forth in the bill, and would not, had it not been revoked but admitted to probate, have given to the complainant an absolute title to the real or personal estate of the said Sylvia, but instead thereof a limited or qualified fee.

And this defendant, further answering, saith, that said instrument was imperfectly and negligently drawn, and that the same was executed, if at all, by the said Sylvia, without the advice or aid of counsel, and without understanding or appreciating the force and effect of the provisions attempted to be made, and the said Sylvia was not in equity or good conscience bound, and that her estate ought not to be affected thereby.

And, further answering, this defendant saith, upon his information and belief, that the said paper writings, copies of which are annexed to the bill and styled the "will" of said Sylvia, and the "second page" thereof, were in the handwriting of Hetty H. Robinson, and that if the same or either of them was signed by said Sylvia, she, the said Sylvia Ann, was at the time in a condition of physical weakness, and of nervous fear of said Hetty, and was induced to sign the same by the continued importunity and under the undue influence of the said Hetty, and that the same if signed were of no force or in any way binding in equity or in good conscience upon the said Sylvia Ann Howland or upon this defendant.

And, further answering, the defendant saith that he admits it to be true, as averred in said bill, that the said Sylvia died on the second day of July, 1865. That her will and codicil were duly presented for probate by this defendant, the executor therein named, and were duly admitted to probate, and that this defendant was duly appointed executor thereof, and that the said Edward D. Mandell, George Howland, jr., and William A. Gordon, who are made defendants in said bill, were the trustees named in said will, and letters of administration were issued to this defendant. And this defendant says the complainant was a party to the proceedings before the probate court for the county of Bristol, and before the supreme court of probate, upon her appeal from the decree of the court below; and this defendant says and submits to the honorable court, that the judgment and decree of the supreme court of this commonwealth, admitting said will and codicil to probate, and appointing this defendant executor, and issuing

to him letters of administration, are conclusive upon the rights
23 of the parties to said proceedings upon those set up by the complainant in said bill, or otherwise than as legatee under said will.

And the defendant, further answering, saith, that if any agreement was ever made by said Sylvia Ann Howland, and the complainant, by which the will of the complainant, upon the making of another will by the said Sylvia Ann, was to be returned to the complainant, and if the will of the complainant was under said agreement ever put into the possession of the said Sylvia Ann, all of which, upon information and belief, this defendant denies, yet, that the said Hetty H. Robinson, claiming the right and authority so to do, and without the knowledge or consent of this defendant, took back the will alleged to have been made by her, the complainant, and now has the same under her possession and control; and this defendant insists that by the taking back by the complainant of the will made by her, either the object and purpose of the alleged agreement for the return of the same were effected so that a failure of the said Sylvia Ann to return said will, was immaterial and worked no injury to the complainant, or that by the taking back by the complainant of her said will, said pretended contract or agreement was rescinded and made of no effect.

And this defendant further saith that he has examined the portions of this answer made especially by the defendant William A. Gordon, in response to that portion of the bill particularly requiring answer of the said Gordon, and this defendant Thomas Mandell, says that such portions so answered particularly by the said Gordon, and all and singular the statements of said Gordon, in this answer contained, are to the best of this defendant's information and belief true, and he joins therein.

And the defendant, further answering, says, that the said Edward Mott Robinson died on the 14th day of June last past, and that said complainant was present and knew, at the time, of said decease.

And, further answering, the defendant saith, that he denies that by reason of the pretended promise and agreement, as in said bill averred, the said Sylvia was bound in equity and good conscience not to make said last-named will, or not to revoke her pretended will in favor of the complainant without notifying her, and returning her will to her if the same was at any time left in her possession, and whether any
return was made or other notice than as herein above stated
24 he does not know, and cannot, upon his information or belief, admit or deny, but he denies that the personal estate in the hands of the defendant as executor, or the real estate as devised by said will, are in any affected by such pretended contract; and he denies that the complainant is entitled to receive from this defendant any account, transfer, or payment, or from said Mandell, Howland, and Gordon, any account or conveyance as claimed in said bill of complaint.

And this defendant respectfully submits that he ought not to be declared to hold the said property in trust for the complainant, and that said Mandell, Howland, and Gordon ought not to be declared to

hold the real estate in trust for the complainant, and that they ought not to be decreed to account with her for the interest, dividends, rents, and profits from said estates, and the income thereof or any part thereof, to the complainant, and he denies that she is, or ought to be, entitled to relief as prayed for in said bill of complaint.

And this defendant, further answering, upon information and belief, says, that since the time when said contract or agreement in the plaintiff's bill set forth is alleged to have been made, the said Hetty H. has made one or more wills; whether one or more this defendant cannot upon his knowledge, information, or belief, state, nor the time or times when, by which she made a different disposition of her property from that pretended to have been made by the will set forth in the bill of complaint, and revoked all wills before made by her the complainant.

And, further answering, this defendant saith, that he is informed, that by the laws of the State of Massachusetts, enacted for the prevention of frauds and perjuries, the pretended contract or agreement sought to be set up and established and enforced by the complainant in her said bill ought to have been reduced to writing, and signed by the party to be charged thereby; and, upon his information and belief, he says that said pretended agreement in said bill mentioned, and therein alleged to have been made by said Sylvia and the complainant, was not reduced to writing, and signed pursuant to law; and so this defendant insists that the same is void as against the said Sylvia and these defendants, and that they cannot be affected thereby; and this defendant claims the same benefits as if he had pleaded the statutes of frauds and perjuries in this case. And for the reasons and upon the circumstances aforesaid, this defendant is advised and insists that said complainant is not entitled to any relief against these defendants touching the matters complained of in said bill of complaint.

And the said William A. Gordon, defendant in said bill, answering, and reserving to himself at all times all right of exception to the said bill of complaint, or to any part thereof, for answer thereunto, or to so much thereof as he is advised is material or necessary for him to answer, joins in the answer aforesaid of the said Thomas Mandell, and says that he has examined the same, and that the same and all and singular the averments and denials therein are to the best of his information and belief true.

And, further answering, the said Gordon saith, that it is true that said Sylvia Ann Howland did say to him in substance, "I had rather not make a will if I could help it, on account of Hetty," meaning the complainant; and did also say in substance, "I have been obliged to promise her that I would not make a will without letting her know it;" and that she did also at another time say to him "that she would make a will if it was not for this pledge or promise to Miss Hetty."

And said defendant says, that at the same time when said Sylvia made the statement in substance last aforesaid, and as part of said statement and conversation, she said to him as follows: "I was forced

to promise her so, she dinned me and teased me and gave me no peace till I did."

That she then asked me, said Gordon, my advice, and that thereupon I said that I believed a promise extorted from one was not considered binding in honor or in law. To which said Sylvia Ann replied, "No? Well, it was so; it was forced from me."

And the said Edward D. Mandell and George Howland, jr., defendants in said bill, severally answering, and reserving to themselves at all times all right of exception to the said bill of complaint, or to any part thereof, for answer thereunto, or to so much thereof as these defendants are advised is material for them to answer, join in the answers aforesaid of the said Thomas Mandell and the said William A. Gordon, and say that they have examined said answers, and that all and singular the averments and denials therein are to the best of their information and belief true.

All which matters and things as herein set forth in answer,
26 the defendants are willing to aver, maintain, and prove, as this court shall direct, and they pray to be hence discharged, with their reasonable cost and charges in this behalf most wrongfully sustained.

THOMAS MANDELL.
EDWARD D. MANDELL.
GEO. HOWLAND, JUNIOR.
WILLIAM A. GORDON.

BENJ. F. THOMAS,
T. D. ELIOT,
} *Of Counsel.*
THOS. M. STETSON, *Solicitor for Resp'ts.*

BRISTOL, *ss:* FEB. 3, A. D. 1866.

Then personally appeared the above-named Thomas Mandell, William A. Gordon, and Edward D. Mandell, and duly and solemnly made oath that they had severally examined the above answer, and that the same as stated is true; and also personally appeared George Howland, jr., and solemnly and sincerely affirmed that he had examined said answer, and that the same as stated is true.

Before me,

ALANSON BORDEN,
Judge of the Police Court of New Bedford.

27 *Will of the late Sylvia Ann Howland.*

Be it remembered that I, Sylvia Ann Howland, of New Bedford, in the county of Bristol, singlewoman, do hereby make, publish, and declare this my last will and testament, in manner and form following:

First. I give and bequeath to the several persons herein named the following sums of money respectively, that is to say:

To Hannah McCofftry, of New Bedford, widow, the sum of ten thousand dollars.

To Hepsa H. Sherman, of New Bedford, widow, the sum of ten thousand dollars.

To Sylvia H. Almy, of New Bedford, wife of Benjamin Almy, and daughter of Gilbert Howland, the sum of ten thousand dollars.

To Phebe H. Allen, of New Bedford, widow, the sum of ten thousand dollars.

To Elizabeth A. Wood, of New Bedford, widow of John Wood, the sum of twenty thousand dollars.

To my cousin, Gilbert Howland, of Dartmouth, the sum of twenty thousand dollars.

To Hetty H. Ricketson, of New Bedford, wife of James C. Ricketson, the sum of ten thousand dollars.

To Martha Howland, daughter of Joseph Howland, the sum of five thousand dollars.

To Gideon Howland, of Dartmouth, the son of Joseph Howland, the sum of twenty thousand dollars.

To Sarah M. Howland, of New Bedford, wife of Peleg Howland, the sum of twenty thousand dollars.

To Lydia T. Howland, the widow of Paul Howland, the sum of five thousand dollars.

28 To Electa Montague, of New Bedford, who is now my nurse, the sum of five thousand dollars.

To Fally B. Brownell, widow, who is now my housekeeper, the sum of four thousand dollars.

To Samuel Allen Sisson, of Dartmouth, the sum of five thousand dollars.

To Roan Sisson, wife of Samuel A. Sisson, the sum of two thousand dollars.

To Nancy Sisson, widow, mother of Samuel A. Sisson, the sum of three thousand dollars.

To Rebecca Thornton, widow of Elisha Thornton, the sum of five thousand dollars.

To Virginia Gerrish, the wife of William L. Gerrish, the sum of five thousand dollars.

To Sarah Eppendorff, the daughter of Joseph Howland, the sum of ten thousand dollars.

To Lydia Congdon, of New Bedford, widow, the sum of ten thousand dollars.

To Rhoda Taber, the wife of William C. Taber, the sum of ten thousand dollars.

To Sally Howland, widow of the late John Howland, of New Bedford, the sum of ten thousand dollars.

To Sylvia Howland, wife of George Howland, jr., of New Bedford, the sum of ten thousand dollars.

To Luthan Mosher, of Dartmouth, the sum of one hundred dollars.

To Hetty Hussey, the wife of George Hussey, of New Bedford, the sum of twenty thousand dollars.

To Benjamin Irish, of New Bedford, clerk of Isaac Howland, jr., & Co. the sum of fifteen thousand dollars.

To Edward Mott Robinson, of New York, the sum of one hundred thousand dollars.

To Thomas Mandell, of New Bedford, the sum of two hundred thousand dollars.

Secondly. I give and bequeath to the New Bedford orphans' home the sum of twenty thousand dollars.

Thirdly. I give and bequeath to the city of New Bedford the sum of one hundred thousand dollars; and I direct that the said
29 sum shall be paid into the treasury of the city, and shall be used and expended under the direction of the city council toward the introduction of water into the city, or for the encouragement otherwise and more general introduction into the city of heavy manufactures which require the use of steam. I give this legacy to my city, because I believe that its prosperity depends much upon the establishment and encouragement of manufactures within the city.

Fourthly. I give and bequeath to the city of New Bedford the further sum of one hundred thousand dollars; and I direct that this sum of money shall be invested judiciously under the direction of the city council, and that the income therefrom shall be expended and used for the promotion and support within the city of liberal education, and for the enlargement from time to time of our free public library.

Fifthly. I give and bequeath to Edward D. Mandell, George Howland, jr., and William A. Gordon, all of New Bedford, the sum of ten thousand dollars in trust; and I direct them to invest the same in their own name, and to pay to Frederick Brownell, who now works for me, the income and net profits arising therefrom during his life, and after the decease of said Frederick to pay the said income to his present wife if she shall survive him, during her life, and after the decease of said Frederick and wife to pay, distribute, and divide the said principal fund, however the same may be then invested, to and among the children of said Frederick and wife, and issue of any deceased child by right of representation.

Sixthly. I give and bequeath to the said Edward D, Mandell, George, Howland, jr., and William A. Gordon, trustees above named, the further sum of ten thousand dollars in trust; and I direct them to invest the same in their own name, and to pay to Keziah Price, daughter of the late Charles Russell, the income and net profits therefrom during her life, and after decease to pay, distribute, and divide the said principal fund, however the same may be then invested, to and among the children of the said Keziah and the issue of any deceased child by right of representation, such issue taking the share which would have belonged to their deceased parent.

Seventhly. I give and bequeath to the said Edward D. Mandell, George Howland, jr., and William A. Gordon, trustees, the further sum of three thousand dollars in trust; and I direct them to
30 invest the same as aforesaid, and to pay to Eliza H. Brown, of New Bedford, widow, the net income and profits therefrom during her life, and after her decease to pay the principal fund aforesaid to the children of the said Eliza H. Brown, and the issue of any deceased child by right of representation, such issue taking the share which would have belonged to the deceased parent.

Eighthly. I give and bequeath to the said Edward D. Mandell, George Howland, jr., and William A. Gordon, trustees, aforesaid, the further sum of ten thousand dollars in trust; and I direct them to invest the same as aforesaid, and to pay over, from time to time, to Pardon Gray, of New Bedford, livery stable keeper, the net income and profits therefrom during his life, and upon the decease of the said Pardon Gray to pay, distribute, and divide the principal fund aforesaid to and among the children of the said Pardon Gray, and the issue of any deceased child by right of representation, such issue taking the share which would have belonged to the deceased parent.

Ninthly. I give and bequeath to the said Edward D. Mandell, George Howland, jr., and William A. Gordon, trustees, the further sum of five thousand dollars in trust; and I direct them to invest the same as aforesaid, and to pay over, from time to time, to Sarah Ann Thornton, daughter of the late Elisha Thornton, the net income therefrom during her life, and after the decease of the said Sarah Ann Thornton to pay the said principal fund to Rebecca Thornton, mother of said Sarah Ann.

Tenthly. I give and bequeath to the said Edward D. Mandell, George Howland, jr., and William A. Gordon, trustees, the further sum of fifty thousand dollars in trust; and I direct them to invest the same, as aforesaid, and to hold the same well and permanently invested, and to pay and divide the net income and profits therefrom, from time to time, to and among such poor, aged, and infirm females of the city of New Bedford, as shall in their judgment be most worthy of relief, and who without being wholly destitute have yet not enough for comfortable and decent maintenance.

Eleventhly. I give and bequeath to Edward D. Mandell, George Howland, jr., and William A. Gordon, each of them the sum of fifty thousand dollars. This gift is not intended to be in compensation for services to be rendered as trustees under this will, but as a
31 token of my esteem and regard, and I direct that said trustees shall in addition thereto be reasonably paid for their labor and responsibility in managing the trusts herein created.

Twelfthly. All the rest, residue, and remainder of my estate and property, real, personal, and mixed, wheresoever the same may be, however invested, in whatever consisting, howsoever described, or wherever situate, I give, devise, and bequeath to the aforesaid Edward D. Mandell, George Howland, jr., and William A. Gordon, their heirs and assigns, in trust, for the uses and purposes herein set forth. And I direct and empower the said trustees, and their successors in said office, to manage and improve the whole of said estate, and to sell and convey any portions thereof, whether real or personal, and to invest and reinvest the principal thereof, and so to care for and conduct the same as in their judgment shall be best for the interest of all concerned. And from the rents, profits, and income from the said property, I direct them to pay all taxes, expenses, charges, and commissions of whatever name or nature, that shall be assessed upon, or arise from, or grow out of the said residuary estate, or the management, care, or disposition thereof; and the balance of said rents,

profits, and income shall be deemed to be the net income from said estate, and I direct the said trustees to pay the said net income, from time to time, to my niece, Hetty H. Robinson, the daughter of my sister Abby S. Robinson, during the life of the said Hetty H. Robinson. I wish said trustees to make said payment when and as often as it may in their judgment be convenient for them so to do. And in the management, disposition, and sale of said property, and in the investment, from time to time to be made, it is my will that the said trustees shall exercise their own judgment, and shall act and do in all respects what shall be deemed by them to be for the interest of all parties concerned in said estate. And upon the decease of the said Hetty H. Robinson, I direct and order said trustees and their successors in said office to pay over, distribute, and divide the whole of said residuary estate to and among all the lineal descendants, then living, of my grandfather, Gideon Howland; and if all the lineal descendants aforesaid then living are in the same degree of kindred to the said Gideon Howland, they shall share the said estate equally and shall be paid in equal shares; otherwise they shall take according to the right of representation, and the said trustees shall pay them respect-
32 ively such portions as shall, according to the right of representation, belong to them.

Thirteenthly. It is my will, and I direct, that the trustees above-named shall keep all the funds held by them in trust, prudently and safely invested; that they sell from time to time all portions of my estate which are unproductive, and which in their judgment ought to be sold, and invest the net proceeds of sale; that in all respects they have full power to act as they shall deem best for all concerned; and that they shall be held responsible for their diligence and fidelity and integrity, but not otherwise, nor for any losses sustained without their negligence or fault.

Fourteenthly. In the event of the decease of either of the persons named as trustees in this will, or of any person acting as trustee under the provisions thereof, I hereby direct that the two remaining or surviving trustees shall in writing nominate and appoint a successor, who shall, after being duly qualified, act with the other trustees, and thereafterwards be clothed with the same authority and power as though he had been originally appointed by me. And if any action by the probate court or by the supreme judicial court is required or deemed advisable, I request that such appointment, so made, may be duly and legally confirmed by the court.

Lastly. I hereby direct that the aforesaid trustees, and the executor of this will hereinafter named, shall not be called on to give any sureties to the bonds required of them, and that the penal sum named in their bonds shall not exceed the sum of one hundred thousand dollars. And I do now appoint my friend Thomas Mandell, of New Bedford, to be the sole executor of this will.

In testimony whereof, I, the said Sylvia Ann Howland, have hereunto set my hand and affixed my seal on this first day of September, in the year of our Lord one thousand eight hundred and sixty-three.

SYLVIA ANN HOWLAND. [SEAL.]

33 Signed, sealed, published, and declared, by the said Sylvia Ann Howland, as and for her last will and testament, in the presence of us, who, at her request, in her presence, and in the pressence of each other, have hereto set our names as witnesses. And the said Sylvia Ann Howland has also in our presence subscribed three sheets of paper upon which, with this the fourth sheet, this will is written.

THOMAS D. ELIOT.
JACOB BIGELOW.
SIMPSON HART.

I, Sylvia Ann Howland, of New Bedford, in the county of Bristol, singlewoman, do make and establish this codicil to my last will and testament, as follows:

1st. Whereas, in and by my said will I gave and bequeathed to Edward M. Robinson one hundred thousand dollars, I do now, for reasons which I think sufficient, revoke and annul that gift and bequest.

2d. I give and bequeath to Edward D. Mandell, George Howland, and William A. Gordon, trustees named in my said will, the sum of ten thousand dollars in trust; and I order and direct the said trustees to hold and keep the same well invested, and to pay the interest, income, and profits thereof, to Sally Russell, during her life, and at and upon her decease, to pay over the said last-mentioned sum to the orphans' home in New Bedford.

3d. I give and bequeath to the trustees above named the sum of twenty-five hundred dollars in trust; and I do order and direct them to hold and keep the same well and safely invested, and to pay the interest, income, and profits thereof to Lydia Russell, sister of the said Sally Russell, during her life, and at and upon the decease of the said Lydia to pay over the said last-mentioned sum to the said orphans' home.

4th. I give and bequeath to the trustees above named the sum of twenty-five hundred dollars in trust; and I do order and direct them to hold and keep the same well and safely invested, and to pay the interest, income, and profits thereof to Judith Russell, sister
34 of the said Sally Russell, during her life, and upon and at her decease to pay over the said last-mentioned sum to the said orphans' home.

5th. I give and bequeath to my attending physician, Dr. William A. Gordon, the sum of fifty thousand dollars, in addition to the sum given to him in and by my said will, in grateful acknowledgment of his professional and other services and kindnesses rendered to me by him.

6th. I give and bequeath to Maria Gordon, wife of the said William A. Gordon, the sum of ten thousand dollars; and my will further is, that if the said Maria Gordon shall die before my decease, then the said last-mentioned sum shall be given and paid to the daughters of the said Maria Gordon who may be living at the time of my decease, in equal shares.

7th. I give and bequeath to the daughters of the said Maria Gordon who may be living at the time of my decease the further sum of five thousand dollars, to be equally divided between them.

8th. I give and bequeath to Edward D. Mandell, George Howland, jr., and William A. Gordon, trustees as aforesaid, the sum of twenty thousand dollars in trust, to be held by them in trust; and I order and direct them to hold the same until a corporation shall be established and organized as a national sailors' home, in aid of which a fair was lately held in Boston, and then to pay the same to the treasurer and for the use of such corporation.

9th. In all cases in which any legacy or bequest is given to any person in and by my said will or by this codicil, and the legatee dies before my decease, leaving issue who survive me, my will is, and I do order and direct that such issue shall take the legacy so given in the same manner as the legatee would have done if he or she had survived me, unless a different disposition thereof is made or required by my said will or codicil.

10th. I do hereby ratify and confirm my will and testament aforesaid, excepting such parts and provisions thereof as are inconsistent with the provisions of this codicil, and I desire and recommend to my trustees named in my said will, whenever they may desire legal aid or advice of counsel in the execution of their trust, to consult the Hon. Thomas D. Eliot as their counsellor.

In witness whereof, I, the said Sylvia Howland, do hereunto
35 set my hand and seal this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and sixty-four.

SYLVIA ANN HOWLAND. [SEAL.]

Signed, sealed, published, and declared, by the above named Sylvia Howland, as a codicil to her last will and testament, in presence of us, who, at her request, in her presence, and in presence of each other, hereto subscribe our names as witnesses.

JOHN M. WILLIAMS.
JACOB BIGELOW.
WM. C. TABER.

On the fifth day of March, A. D. 1866, the following replication was filed, namely:

36 United States circuit court, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents. } Replication of Hetty H. Robinson.

This repliant, saving and reserving to herself all and all manner of exception to the insufficiences of the said answer for replication thereto, saith that she will aver and maintain her said bill to be true and sufficient to be answered unto and that the said answer is uncer-

tain, untrue, and insufficient, without this that any other matter or thing in said answer alleged material or effectual in law to be replied to, confessed, and avoided, traversed, or denied is true.

All which matters and things this repliant is and will be ready to maintain and prove as this hon. court shall direct, and humbly prays as in and by the said bill she hath already prayed.

F. C. LORING,
Solicitor.

Filed March 5, 1866.

A On the seventeenth day of March, A. D. 1866, the following petition was filed, namely:

Circuit court of the United States, Massachusetts district.

HETTY H. ROBINSON
vs.
THOMAS MANDELL *et al.* } In equity.

To the honorable the judges of the said court:

Respectfully shews your petitioner, the said complainant, that she has filed her bill in the above-entitled cause, and the respondents having answered the same, and a replication having been filed, the cause is at issue; that the contents of her said bill are true, and that your petitioner is advised by her counsel and verily believes, that the interests of justice require that she should be allowed by the court to testify generally as a witness in said cause.

Whereupon she prays that an order to that effect may be
B passed, & that a commission on such interrogatories & cross-interrogatories, as may be filed, may be directed to issue for her examination therein, before some competent magistrate in the city of New York, her place of residence.

HETTY H. ROBINSON.

F. C. LORING, *Solicitor.*

CITY & COUNTY OF NEW YORK, *ss:*

Hetty H. Robinson, of said city, being duly sworn, says, that she has read the foregoing petition subscribed by her, and that the same is true of her own knowledge.

HETTY H. ROBINSON.

Sworn to before me this 15th day of March, 1866.
[L. S.] CHAS. C. BIGELOW,
Notary Public New York City.

C This cause was thence continued to the May term of this court, A. D. 1866, when on the twenty-eighth day of June, A. D. 1866, the following order was entered, namely:

Order of court.—June 28, 1866.

Circuit court of the United States, first circuit.

MASSACHUSETTS DISTRICT:

HETTY H. ROBINSON
vs.
THOMAS MANDELL *et al.* } In equity.

The court having examined the foregoing petition and heard the parties, ordered that leave be granted to the complainant that she may be examined generally as a witness in said cause before one of the examiners of the court, or before an examiner to be specially appointed by the court under the amendment to the last paragraph in the sixty-seventh rule, reserving the questions as to the competency of the witness and the admissibility of the evidence for farther consideration at the final hearing.

By the court:

JOHN G. STETSON,
Clerk pro tem.

This cause was thence continued to the October term of this court, A. D. 1866, and from the said October term to the May term of this court, A. D. 1867, when on the seventh day of June, A. D. 1867, publication of the testimony passed in the clerk's office by consent and the cause was set down for hearing.

On the second day of September, A. D. 1867, the following bill of revivor was filed, namely:

To the honorable the judges of the circuit court of the United States for the district of Massachusetts, sitting in equity:

The bill of revivor of Hetty H. Green and her husband Edward H. Green, both of the city of New York, in the southern district of the State of New York, and citizens of the last-named State:

Respectfully shows unto your honors that heretofore your oratrix, Hetty H. Green, being then unmarried, by her maiden name of Hetty H. Robinson, did exhibit her bill of complaint in this honorable court against Thomas Mandell, as he is executor of the last will and testament of Silvia Ann Howland, and against Edward D. Mandell, George Howland the younger, merchants, and William A. Gordon, physician, all of New Bedford, in the State of Massachusetts, and all citizens of the last-mentioned State, as they are trustees and residuary legatees, under the will of the said Sylvia Ann, who answered the said bill and the cause being at issue, proofs were taken and published and the cause set down for a hearing, and so now remains. That after the said cause was so set down for hearing your oratrix, on the eleventh day of July last past, was lawfully married to your orator, (Green,) and so as your orators are advised, the said suit became abated.

And your orators pray that said suit may be revived and put in the same state as it was before the said marriage, and that your orators in right of the said Hetty H. may be allowed to prosecute the same.

THAXTER & BARTLETT,
Comp's Solicitors.

And on the same day the following agreement was filed, namely:

Circuit court of the United States.

HETTY H. ROBINSON
vs.
THOMAS MANDELL *et al.* } In equity.

Upon the filing of the bill of revivor of H. H. Green and Edward H. Green, it is agreed that this bill of revivor may be filed and thereupon the suit stand revived, and the defendants will file
G answer thereto admitting the fact of marriage as alleged.

ELIOT & STETSON,
For Def'ts.
THAXTER & BARTLETT,
Pl'ffs' Solicitors.

This agreement being confirmed by the court, the following answer was filed, namely:

To the honorable the judges of the circuit court of the United States for the district of Massachusetts, sitting in equity:

The answer of Thomas Mandell, Edward D. Mandell, William A. Gordon, and George Howland, junior, to the bill of revivor of Hetty H. Green and Edward H. Green, citizens of the State of New York.

And said defendants, answering, say, that they admit the fact of marriage as alleged in said bill of revivor, and they admit the allegations of said bill of revivor to be true.

And they further say that they assent to the prayer of said bill of revivor.

H

THOMAS MANDELL.
WM. A. GORDON.
GEO. HOWLAND, JUN.
EDWARD D. MANDELL.

T. D. ELIOT, *of Counsel.*
THOS. M. STETSON, *Solicitor.*

This cause was thereupon fully heard and was thence continued under advisement from term to term to this present term.

And now, to wit, November 14th, 1868, after mature deliberation thereon had, it is ordered, adjudged, and decreed that the bill of complaint in this cause be, and the same is hereby, dismissed with costs.

Thereupon, the said complainants in open court claim an appeal to the Supreme Court of the United States, and give good and sufficient security to prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good, which security is approved by the court, and said appeal is allowed accordingly.

A true record:

Attest: JOHN G. STETSON, *Clerk.*

I At the hearing of said cause the following evidence was submitted to the court:

United States circuit court.—In vacation.

HETTY H. ROBINSON
vs.
THOMAS MANDELL *et al.* } In eq.

It is ordered in above case, that Francis W. Palfrey, esq., be special examiner to take the testimony of such persons as may be called as witnesses by plaintiffs, according to the terms of the agreement between the parties, bearing date August 6, 1866, and filed in the clerk's office of this court.

JOHN G. STETSON,
Clerk pro tem.

A true copy:
Attest: JOHN G. STETSON,
Clerk pro tem.

37 Circuit court of the United States, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents.

Deposition of Keziah R. Price.

Keziah R. Price, of New Bedford, Massachusetts, widow, aged fifty-five years, being duly sworn, deposes and says as follows:

I have known Miss Sylvia Ann Howland all my life. For the last ten years I have known her very intimately—beer with her nearly all the time. I have stayed with her months at a time, and then been away from her. I was called upon to witness a will of hers. I don't remember exactly when it was. I think it was in 1862—in January. The instrument to which I refer is the one now exhibited to me. I recognize my signature to it as a witness. (The paper is marked, for identification, F. W. P., No. 1.)

In the morning Miss Howland sent her servant man to me, requesting me—(Counsel for defendants object, that the witness should testify only to facts within her own knowledge. The witness resumed:)—A servant man, whom I knew to be Miss Howland's servant man, and by whom she was accustomed always to send her messages to me, came to me—(Counsel for defendants object to the sentence "and by whom"

to "messages to me" as immaterial)—requesting me to call at 4 o'clock, or to come at 4 o'clock, to the house. She told me, when I came there, that she wished me to sign a paper. I went to the house at 4, and when I got there I asked why I was sent for at any particular hour, because it was very uncommon. I can't remember whom I asked. I asked when I got into the room—Miss Howland's room. It's so long ago I can't remember all the persons who were there. Miss Sylvia Ann Howland was there. Miss Montague was in this room, I think. It's so long ago I can't precisely say. I never expected to be called upon to testify. She was always with Miss Howland. I can't remember any one else being in the room in particular. When I asked why I was sent for, some one, I can't remember who, but I think it was Miss Howland, said she wished me to sign a paper, and then remarked that
38 they were waiting for Mr. Peleg Howland. The person who spoke to me said, I can't tell you who it was, that they were waiting for Mr. Peleg Howland. Mr. Howland couldn't come till in the evening after tea. After tea Mr. Howland came, and Miss Sylvia Ann Howland wrote her name. I think Mr. Howland witnessed it first, and then I wrote my name, and then Miss Montague wrote her name. When Miss Howland had signed her name, I think she moved it along on the table for Mr. Howland to sign. (Counsel for plaintiff asks, When she did so, what, if anything, did she say?) I don't remember anything that she said at the time myself except that. That is my signature. I don't remember Miss Howland's saying anything to me that night. She only asked me to sign the paper. I don't remember that she said anything to me about the paper. Miss Robinson was present. She went out of the room and came into the room, I think, in the time. I wish I could remember this more clearly. I and Miss Montague and Mr. Howland were all present, and saw Miss Howland sign it, and I think we all saw each other sign it. I don't see how any one of us could have gone out of the room.

Int. Were you given to understand, at the time, by Miss Howland or any one else, and, if so, how and by whom, what the character of the paper was that you witnessed?

(Counsel for defendants object, that the question calls for the inference of the witness, and not for what was said and done, and because it calls for evidence which is incompetent and immaterial.)

I don't remember that I was told at the time, in the room, what the character of the paper was; I can't remember the words of Miss Howland; I had an idea that it it was a will, but I can't remember that she told me it was a will. I don't remember that she used the words, that it was a will, but she afterwards stated it in after-conversation. She spoke of it as her will in conversation that we had afterwards. That night she was very much agitated; her health was very poor; I don't know that she was more agitated than common, but we said nothing to her, because she was so feeble and weak.

(And in answer to a cross-interrogatory, addressed to her by counsel for defendants, the deponent deposes and says as follows:)

The servant who requested me to come to Miss Howland's house was Frederick Brownell.

KEZIA R. PRICE.

39 UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., special examiner to take the testimony of such persons as might be called as witnesses by the plaintiff in said case, according to the terms of the agreement between the parties, bearing date Aug. 6th, 1866, and filed in the clerk's office of the said court in the city of Boston, do certify, that on the twentieth day of August, A. D. 1866, I caused to appear before me Keziah R. Price, a witness on behalf of the plaintiff in the above-entitled cause; and that she having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, her several answers to the interrogatories propounded to her, were by me reduced to writing in her presence, and by her subscribed in my presence, in the presence of the counsel of both parties, of the plaintiff, and of the defendant, Thomas Mandell, and are hereto annexed. And that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the said city of Boston, this eleventh day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

I further certify, that the order of the circuit court appointing me special examiner, as aforesaid, is shown by a certified copy of the same, hereto attached.

FRANCIS W. PALFREY,
Special Examiner.

40 Circuit court of the United States, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents.

Deposition of Electa Montague.

Electa Montague, of New Bedford, Massachusetts, spinster, aged sixty-two years, being duly sworn, deposes and says as follows:

I lived with Miss Sylvia Ann Howland five years and five months —the most of the time. I was away at one time five weeks. I was living with her in January, 1862. The five years and five months I speak of began in February, 1860, and she died the second of July, 1865. I was called upon to witness a paper—I supposed it was a will—the day that that paper (F. W. P., No. 1.) was executed. I never signed but that one. I saw Miss Howland sign that paper. I suppose I saw Mr. Howland and Mrs. Price sign it. We were all right—sitting there together. I and the other witnesses and Miss Howland were, I think, I wouldn't say all sitting up to the table, but all sit-

ting round. Miss Howland at that time nor at no other time did she ever tell me that that was her will. Miss Robinson said, she asked me to sign the paper; she said it was her aunt's will. She said so in the course of the day, I couldn't specify the time, and asked me to sign it. I couldn't say who asked me to sign it after Mr. Howland and Mrs. Price had signed—I was asked to before. Miss Howland made a will after this,—most two years—no—let me think, it was in September, 1863.

Int. If the will last referred to, as made by Miss Howland, in September, 1863, shall prevail against the will that you witnessed in January, 1862, do you understand that you are to derive any benefit from it?

Ans. I suppose there is to be a legacy to me, but when the will of September, 1863, was made I had no idea I was to have any benefit from it. Miss Howland wrote her name, and we were all in
41 the room when she signed the paper. Mr. Howland put his name to it, and Mrs. Price and I, in the presence of each other and of Miss Howland. I do not remember who asked Mr. Peleg Howland to put his name there, nor who asked Mrs. Price to set her name there.

ELECTA MONTAGUE.

UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States, in the case of Hetty H. Robinson, in equity, vs. Thos. Mandell et al., special examiner to take the testimony of such persons as might be called as witnesses by the plaintiff in said case, according to the terms of the agreement between the parties, bearing date Aug. 6th, 1866, and filed in the office of the clerk of said court, in the city of Boston, do certify that on the twentieth day of August, A. D. 1866, I caused to appear before me Electa Montague, a witness on behalf of the plaintiff in the above-entitled cause; and that she having been duly sworn to testify the whole truth and nothing but the truth relating to the matter at issue in the same, her several answers to the interrogatories propounded to her were by me reduced to writing in her presence, and by her subscribed in my presence, in the presence of the counsel of both parties, of the plaintiff, and of the defendant, Thos. Mandell, and are hereto annexed; and that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the said city of Boston, this eleventh day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

42 Circuit court of the United States, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents.

Deposition of Peleg Howland.

Peleg Howland, of New Bedford, Massachusetts, dealer in hardware and fishing-tackle, aged seventy years, being duly affirmed, deposes and says as follows:

I knew Sylvia Ann Howland. I was called upon by Hetty. Hetty came to my store one afternoon, and wanted that as I went home to tea, I should stop at her aunty's and sign a will, For you know, she said, my father got all my mother's property. Instead of stopping there as I went home, I went home first and got my tea, and then went there in the evening, and went up into Sylvia Ann's room and shook hands with her, and sate down, and presently Sylvia Ann was shoved up to the table in her chair, and Hetty laid a paper on the table for Sylvia Ann to sign. Sylvia Ann signed it, and then it was shoved over to me to sign. I says, What is this I am going to sign to? Hetty speaks up and says, a will. I signed it. Then it was shoved to Mrs. Price, and she signed next, and then Electa. I believe that's pretty much all the conversation that passed. Sylvia Ann never said it was a will. In fact, she never spoke will to me in her life, in no shape. After signing the paper, Hetty takes it up and folds it together, and Sylvia Ann says, Hand that to me. She took and reached it over the table to her, Hetty did, and Sylvia Ann took it and laid it in her lap. I sets a few minutes and then leaves, and that's the last that I know of it.

Miss Howland signed her name to this paper (F. W. P. No. 1) in presence of myself, Mrs. Price, and Miss Montague, and we signed our names in her presence, and in presence of each other, to this same paper.

Int. Are you the husband of the Sarah M. Howland who is to receive twenty thousand dollars under the will of Miss Howland, made subsequent to the will you witnessed; that is to say, to whom
43 a legacy of that amount is given by that will? (Question by by Mr. Bartlett of counsel for plaintiff.)

Ans. I am. I am a second cousin of Sylvia Ann Howland. My wife is no way akin to her.

(And in answer to a cross-interrogatory, addressed to him by counsel for defendants, the deponent deposes and says as follows:)

Mrs. Price shoved that paper to me after it was signed by Miss Howland.

Direct examination resumed; i. e., the witness is now examined in chief as a witness to another paper, to be annexed to this and the other depositions.

Hetty came to my house with Edward S. Taber, and was shown into the parlor, and my wife told me that they was there. I went in

and Hetty was putting a piece of paper on the table, and my wife stepped out for some ink—pen and ink. Benjamin Mitchell was also in the room. He's not living. That's the reason I did not mention him. He was my wife's brother. He died the last of last December, in New York, Dec. 1865. Hetty wanted us to sign it. I took the pen and signed it, and Mr. Taber he signed it, then Benjamin Mitchell, and then Hetty folds it up and takes it off the table and takes possession of it. Then she left with Edward Taber, left the house. That's all I remember. I, and Benjamin Mitchell, and Edward Taber all signed it in her presence, and in the presence of each other.

Int. Whether or not was the signature of Miss Robinson to the paper when you signed it?

Ans. I couldn't—I didn't see it—I did not see it. Neither did she sign it in my presence.

Int. Do you mean to say, upon your knowledge and recollection, that her signature was not there at the time you signed it?

Ans. It was not there at the time I signed it to my knowledge—I mean to say it was not there—I did not see it.

Int. Do you mean to say that you was signing simply a blank paper, and if not, what did you suppose you were signing?

Ans. I couldn't tell what I was signing. I was requested to sign a paper, and I signed it; and what that paper contained I knew not, more than the dead. (Upon the question's being repeated, What did you suppose you were signing, the witness answers:) I give you all I know.

44 Int. Do you now mean to say, upon your affirmation, that you examined that paper to see whether Miss Robinson's signature was affixed to it?

Ans. No, I didn't examine it.

Int. Look at paper marked F. W. P., No. 2, and state whether that is the paper you referred to in the testimony you have just given.

Ans. That's my signature. This is Hetty's concern; if this is her paper, that's my signature.

Int. Was the date of the paper inserted in your presence? and if so, by whom?

Ans. No.

Int. Then it was inserted after you signed it, was it not?

Ans. No.

Int. Then you saw it, did you not, before you signed it?

Ans. I didn't see it at all.

Int. What do you mean, then, by your last answer?

Ans. I mean that I didn't see it there at all—I didn't see anything at all about it, dates or anything else—I don't see what you are trying to catch me on. I tell you all I know.

Int. Will you look at the ink in which the date of the will is written, and the ink in which your signature is written, and say whether they are the same as that of the body of the instrument in your judgment?

Ans. I signed that paper; that's all I know about it.

Int. I repeat the question.

Ans. One is blue ink and the other is black ink. That's all I know; that's all the difference I can see.

Int. Is the ink in which your signature is written the same as that in which the date of the instrument is written?

Ans. It looks like it; but then I don't know as it is it. All I know about this thing is my signature there. I never saw the inside of it. I can't tell you nothing about it, because I don't know nothing about it.

Int. In whose handwriting, according to your judgment, is the date of that instrument inserted?

(Objected to generally by counsel for respondents.)

Ans. I can't tell you nothing about it, for I don't know nothing about it. All I know is that I signed my name there. What's the use in asking of me to look into a stone?

45 Int. Have you ever seen Miss Robinson write?

Ans. No.

Int. Should you say that the handwriting of the body of the instrument was the same as that of the date, or not?

(Objected to).

Ans. I don't see how I could tell that. It would be mere matter of opinion. I should say not—by no means.

Int. Did you read the certificate at the foot of the will to which you put your signature, before you signed it, or did you ask, as you say you did in the case of Miss Howland's will, What is this I am going to sign to?

Ans. I didn't read the certificate at all. I merely asked, What is this I'm a-going to sign to?

Int. Whom did you ask this of?

Ans. Of all of them, Sylvia Ann, Electa, and Mrs. Price. They was the ones—sitting by—and Hetty was there too, and she said it was a will.

Int. Did you ask the same question when you signed Hetty's will? And if not, why not?

Ans. I didn't ask it. I can't tell you why not. Because I didn't think of it, I suppose.

Int. Who spoke to you first when you went into the room at the time you and Mr. Taber and Mr. Mitchell signed the paper now shown you, marked F. W. P. No. 2, and what did they say?

Ans. I can't tell you who spoke to me first, and I can't recollect hearing them say anything.

Int. Who asked you to sign the paper, and what did they say?

Ans. The paper laid on the table for us to sign. I don't recollect of any one's asking us to sign it.

Int. Then you signed it without anybody's asking you to do it, did you?

Ans. Yes. I took it for granted I must sign it—the paper lay there before me, and pen and ink.

Int. You feel sure then, do you not, that you were not asked to sign it?

Ans. I think not.

Int. Then you neither knew what the paper was nor were asked to sign it, but signed it simply because it lay before you on the table, did you not?

(Objected to as wholly leading, and cross-examination.)

46 Ans. I didn't know what it was, because they didn't read it, and I was perfectly ignorant of what it contained. It was of no consequence to me, and I didn't care anything about it. (The question being repeated, the witness answers:) Yes.

Int. How did you know that it did not contain some promise or obligation on your part?

Ans. I knew if it was a document of the kind it pretends to be here, I shouldn't derive any benefit from it if I signed it. That would kill me. I didn't know it didn't contain some promise or obligation on my part; I didn't know nothing about it; I didn't see the inside of it.

Int. Then you mean to say, do you, distinctly, that you did not know whether your signature bound you to anything or not?

Ans. I thought not, of course.

Int. What made you think not?

Ans. Because there was others going to sign at the same time.

Int. As you signed first, how did you know that the others were to sign afterwards?

Ans. Because they was in my presence.

Cross-examination by counsel for defendants:

Miss Robinson did not point out her name on that paper as her signature. She did not state to me what the instrument was. Miss Robinson did not say to me in any way that that was her signature.

Direct examination by counsel for plaintiff:

Int. Will you look at the paper maked F. W. P. No. 2, and say whether that is the paper which was signed by you and Mr. Taber and Mr. Mitchell in the presence of Miss Robinson at the time you have above stated?

Ans. Yes.

PELEG HOWLAND.

UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States, in the case of Hetty H. Robinson vs. Thos.

47 Mandell et al., in equity, special examiner to take the testimony of such persons as might be called as witnesses by the plaintiff in said case, according to the terms of the agreement between the parties, bearing date Aug. 6th, 1866, and filed in the clerk's office of the said court, in the city of Boston, do certify that on the twentieth day of August, A. D. 1866, I caused to appear before me, Peleg Howland, a witness on behalf of the plaintiff in the above-entitled cause; and that he having been duly affirmed to testify

the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, in the presence of the counsel of both parties, of the plaintiff, and of the defendant, Thomas Mandell, and are hereto annexed, and that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the said city of Boston, this eleventh day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

Circuit court of the United States, Massachusetts district—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents.

Deposition of Edward S. Taber.

Edward S. Taber, of New Bedford, Massachusetts, aged forty years, being duly sworn, deposes and says as follows:

My name affixed to paper marked F. W. P., No. 2, is my signature. It was signed in my presence by the other two witnesses in
48 my presence, and also in the presence of Miss Robinson. Perhaps to answer the question whether I signed it at the request of anybody or not, and if so by whose, I should refer back to the occasion of Miss Robinson's calling at my house. It was in the evening time—about the time of my evening meal—that she called at my house and stated that she had visited me on a business matter, or words to such effect, and stated to me that, if convenient, she would have me accompany her to the house of Mr. Peleg Howland to sign—I should have to be indefinite here—to sign my name. There I would stop.

Int. State your best recollection of what she wanted you to sign your name to, and whether as a witness or what.

(Objected to as leading.)

Ans. She did not to my best remembrance leave any impression with me as to the document she would have me sign, but I did have an impression that I was to make signature as a witness. I at once acquiesced in her desire, which was that I should accompany her to Mr. Peleg Howland's. At Mr. Howland's, I met Mr. and Mrs. Howland, and there was otherwise present Mr. Mitchell. Some of the details of this matter are to me somewhat blinded, and I will continue by saying that I cannot make so continued a narrative as I could wish. I remember a paper being placed before me upon a table, to which I affixed my signature, Mr. Peleg Howland first affixing his. As to the nature or terms of the document, I was in ignorance. I should say that after a few moments spent in conversation, I then went home. I didn't examine the document critically at all before

I signed it. I wouldn't take my oath whether or no the words "nineteenth" "September" were written in my presence or not. I do not know Miss Robinson's handwriting.

Int. Do you remember whether or not Miss Robinson took the pen into her hand and traced her signature?

Ans. I should say she did not. My impressions would be that she did not take the pen into her hand at all. I am very clear that she did not sign the document. As to whether or no she took the pen into her hand at all, I should not be so positive as in regard to the other matter. I think Miss Robinson put the paper on to the table. I would not be too clear upon that point. In reference to my want of distinctness in regard to the details of this matter, I would state that I was not, at the time I called at Mr. Howland's, im-
49 pressed with that sense of the importance of the document to which I appended my signature, as has since been made known.

Int. Did you read or examine at all page 3 of paper F. W. P., No. 2?

Ans. I did not.

Int. Didn't you examine it enough to know, &c.?

(Question waived.)

Ans. I can't make it matter of positiveness who asked the other witnesses to sign their names—I have no recollection about it.

Int. You have said that you didn't examine the last page of the will at all; if so, can you state whether Miss Robinson's signature was there or not at the time you signed it?

Ans. I can't answer differently from what I have. I have no doubt on that point, but you don't allow me to answer it as I should like to, and I have not a distinct recollection. My answer would be partly inferential or suppositious.

Int. At the time Miss Robinson told you she wanted you should witness or sign your name as you supposed as a witness, did she say whether it was to her signature or to that of some one else, and whose?

(Objected to as leading.)

Ans. I do not recollect that she made any statement as to that point.

Int. Can you remember what she said to the other witnesses, if anything, when you and she met them?

Ans. I do not remember that she said anything appertaining to this business.

Int. You and she went into the room together, did you not, and there met or found the other witnesses, did you not?

Ans. I believe that we went into the room together. I there met Mr. Mitchell, and was introduced to him. I had previous acquaintance with Mr. and Mrs. Howland.

Int. Under those circumstances, do you mean to say that the other witnesses put their names to the paper without a word's being said to them on the subject, or have you forgotten what occurred?

Ans. I remember a question of precedence between Mr. Peleg Howland and myself, as to who should sign first. He finally con-

cluded to sign it first, myself following. I think I remember Mr. Mitchell's taking a seat and signing after myself. I do not remember that we were particularly individually questioned or asked to sign the document.

Int. I repeat the question.

50 (Objected to.)

Ans. I should say I had forgotten what had occurred—(objected to as inferential)—except what I have testified to as to the question of precedence; I remember that distinctly. Also, I feel very positive about my remembering Mr. Mitchell's taking a seat and signing after myself.

Int. If you were called to witness a signature, should you, as a business man, have signed the instrument without first knowing that the signature you were to witness was upon it?

(Objected to—leading in form, incompetent, and immaterial in substance. Question withdrawn.)

Int. If you were called to witness a signature, should you or not, as a business man, sign the instrument without first knowing that the signature you were to witness was upon it?

(Objected to—leading in form, incompetent, and immaterial in substance.)

Ans. I should not.

Int. Did anything in your conversation with Miss Robinson, and in her presence, and in the presence of the other witnesses, occur to lead you to suppose what was the character of the instrument you were called upon by her to witness? If so, state it.

(Objected to.)

Ans. I should state that nothing so occurred.

Int. So that you left the room without any knowledge or belief o what the character of the instrument was, did you?

(Objected to—form and substance.)

Ans. I did, except that I considered it a valuable instrument. Perhaps, I would say, meaning thereby not an instrument of so much value or importance as a will.

Int. What made you think it was a valuable instrument?

Ans. Because I considered that any instrument which required three witnesses would probably be a valuable instrument.

Int. Is your wife or are your children lineal descendants of Gideon Howland, among whom, under Miss Howland's will of 1863, the residue of her estate, or any part thereof, is to be divided?

Ans. In some way my wife is a descendant of some of the older branches of the Howland family; I never inquired into it. I have never given any attention to the matter. I am not clear, but I have an idea perhaps; I think that my wife is descended from the Gideon Howland stock, the old man of all.

51 Cross-examination:

I couldn't say that Miss Robinson did or did not sit down in this interview at Peleg Howland's house.

(On hearing the testimony read, the witness desires to add to his

answer to the question, "If you were called to witness a signature," &c., as follows:) Inasmuch as my answer would seem to conflict with my answer to a previous question, wherein I signified that I knew nothing of the last page of the instrument, to that point, I should infer that I was satisfied the signature was there before I witnessed it. I think I should be satisfied.

Answer objected to generally by counsel for defendants.)

EDWARD S. TABER.

UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States appointed special examiner in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., as by a certified copy of said order hereto attached appeareth, do certify that on the twentieth day of August, A. D. 1866, I caused to appear before me Edward S. Taber, a witness on behalf of the plaintiff in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, in the presence of the counsel of both parties, and are hereto annexed. And that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name at the said city of Boston, this eleventh day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

52 Circuit court of the United States, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents.

Deposition of Hetty H. Robinson.

Hetty H. Robinson, of New York city, singlewoman, plaintiff in above-entitled cause, being duly sworn, deposes and says as follows:

I was born in New Bedford. I remained with my father and mother until I was eighteen months, and then I went to live with my aunt. She was living with her father, Gideon Howland. Ruth Howland lived also in the house. I lived there until I went from home to school. I always kept a room at my aunt's after I left school, and lived part of the time there and part of the time at my father's. My grandfather, Gideon Howland, died about thirteen years before my mother. I lived part of the time at my aunt's and part of the time at my father's after I left school, until the death of my mother. My aunt did not live all the time in the same house: she moved. My

aunt always took care of me, and told me if I could go anywhere—took care of me same as my mother did—while I was living at Gideon Howland's. She took care of me and advised me while I was living at Gideon Howland's, and while I was living at my father's, between my return from school and my mother's death. I never did anything of importance without her knowing it. My mother died February 21st, 1860. After the death of my mother, and until I removed to New York, I lived with my aunt Sylvia. From January or February, 1862, I was off and on in New York, where my father lived. I went to New York to remain some time in August, 1863. After the death of my mother, the nearest relatives my Aunt Sylvia had, besides myself, were first cousins; I should think there were about ten. Their family names were Howland, Grinnell, and Allen. My mother's father's name was Gideon, and her father's father's name was
53 Isaac Howland. My aunt's father and grandfather were the same, Gideon and Isaac. A portion of the property given by her grandfather to my mother, personal property, was put in trust; and the paper produced, my Aunt Sylvia told me, was the instrument.

(Paper produced, admitted by defendants to be the instrument, and put in, marked for identification, F. W. P., 3.)

My mother was a legatee under the wills of her father and her grandfather. The papers produced were given me by my Aunt Sylvia, as being copies of those wills.

(Papers put in, and admitted as copies instead of originals, if the originals would be competent. Copy of Isaac Howland's will marked F. W. P., 4. Copy of Gideon Howland's will marked F. W. P., 5.)

1 int. Did you ever hear your aunt say anything about what became of the rest of the property not put in trust, which was given to your mother by the wills of her father and grandfather; and, if so, about what the amount was?

(Objected to as calling for incompetent and immaterial testimony, by counsel for defendant.)

Ans. Miss Sylvia Howland said it was taken by my father. She said the amount was about five hundred thousand dollars.

(Form of narrative resumed.)

After my mother's death, my father claimed the property put in trust as above.

2 int. Did your aunt say anything to you about that claim, and her opinion of the claim, whether right or wrong; and what, if anything, did she say about it?

(Objected to by counsel for defendant, as calling for incompetent testimony, and particularly as calling for conversations with deceased.)

Ans. She said that my father was to take the personal property, and I was to have the house, under an opinion of Judge Thomas. She was so much grieved about it, crying to think that my father had enough already of the Howland estate. She was very angry in consequence.

(Last three lines and interlineation objected to as incompetent evidence and irresponsive.)

She said she thought the claim was very wrong, as father had once given it up. The copy of Judge Thomas's opinion I now pro-
54 duce was, I think, recently obtained for me from Mr. Thomas Mandell, one of the defendants, by Mr. Green.

(Paper marked for identification F. W. P., 6, and put in. Admitted by defendants, if the original would be competent evidence.

Form of narrative resumed:)

This summer of 1860 I spent most of it, with my aunt at Round Hills, her farm, about seven miles and a half, I think, from New Bedford. I went there in the spring, I should think, some time in May. We went together. It may have been in June.

3 int. After this opinion of Judge Thomas, and after your father took the property, did anything occur between you and your aunt, and what, as to the making of any wills by you or her, and what?

(Objected to, form and substance.)

Ans. Yes; she asked me if I would make a will satisfactory to her, she would make a will in my favor, so that my father could get no more of the Howland estate, and we would make a solemn contract that neither will should be revoked without returning the other's will to the other through Thomas Mandell. She was to keep mine, and I hers; mine to stand just as it was until hers and my father's death. Her will I had was to be until her death.

4 int. What did you say in answer to this proposal, if anything; and was it the subject of only one conversation or more?

(Objected to, form and substance.)

Ans. I agreed to it perfectly, and said that I would make a will perfectly satisfactory to her. We had several conversations about it, and she proposed sending for Mr. Tucker. Mr. Tucker was sent for—Charles R. Tucker. I told him I would like to make a will, and he asked me what I would put in it, what I would have in it, and I told him I would have it given to my descendants, and in default of which to charity.

(All conversation with Mr. Tucker objected to by defendants, as well as the rest of the answer.

Counsel for plaintiffs directs that it be noted that, the objection being made, they decline to press the witness to answer further. Counsel for defendants request that it be added that, before counsel for plaintiffs had taken his position, deponent said, "I had not finished; if I leave it so, it will be incomplete." Question withdrawn, and the following put:)

5 int. Without stating what, if any, conversation you may have had with Mr. Tucker in detail, will you state whether you did
55 or did not give him or any one else, and whom, if any, any instructions about a will to be made for you?

(Objected to.)

Ans. I gave him instructions. I asked him to go to Mr. Prescott—Oliver Prescott, a lawyer—to make a draft of a will for me, or to draw a will for me.

6 int. Whether or not did anything pass between you and Mr. Tucker; and if so, what, upon the subject of making or not making

a provision for your father in your will? State your best recollection.

(Objected to, form and substance.)

Ans. He asked me if I wasn't going to remember, to give a present to my father; and I told him I would give a small, a very small remembrance to my father and my aunt.

7 int. State whether or not any reason was given by him for asking that question; and if so, what?

(Objected to, form and substance.)

Ans. Not that I remember. He didn't give me any reasons. He was merely asking me how I was going to leave it.

(Narrative form resumed:)

Mr. Tucker brought that paper to me, and said Mr. Prescott had drawn it. (That paper is produced and put in, and marked for identification F. W. P., 7. Evidence from "Mr. Tucker brought" objected to.) At the time Mr. Tucker brought me this paper I was in town, and my aunt was in town. We had not yet gone to Round Hills.

8 int. Whether or not did you exhibit that paper to your aunt; and, if so, did she or not examine it; and, if so, what, if anything, did she say in regard to it?

(Objected to, in form and substance.)

Ans. My aunt examined it, and said I must leave out the legacy to my father. She told me that if I wrote a will to satisfy her I must take a slate and sit down, and she would tell me what to put in it. I wrote down the will that I have attested on the slate to her entire satisfaction. The words in F. W. P., 2, are the same words that I wrote on the slate. By the phrase "the will that I have attested," I mean the paper marked F. W. P., No. 2. The slate was written in town, and I took it to Round Hills, and copied it and wrote that. Paper F. W. P., No. 2.

9 int. State the process; how you proceeded to draw the
56 will on the slate (objected to as to substance) and whether or not was your aunt present.

(Objected to as to substance.)

Ans. It was a matter between my aunt of a number of days' consultation. I would change it, whatever my aunt said. If she changed her mind, I would change it. At last she told me that this—the copy of the will—was perfectly satisfactory. We had the Prescott draft there and we used it sometimes. I don't distinctly recollect how much. I mean it was a matter between my aunt and myself of a number of days' consultation.

10 int. Whether or not was anything, and, if so, what, said by your aunt about the fourth item of Mr. Prescott's draft of a will, which gives your property to your aunt in case you die without leaving children or issue?

(Objected to.)

Ans. She said, as she had requested to leave my father out, the world might say that she made me give it to her, and as it would make the will shorter, and I had very little to give away, I had beter give it to my children and charity.

11 int. After the will was copied from the slate on paper, was it ever seen by your aunt before it was executed?

(Objected to.)

Ans. It was, and read. She said it was perfectly satisfactory. She saw it after it was executed, and read it. It was given to her.

12 int. Whether or not did you have any conversation with your aunt about the execution of or witnesses to the will? If so, what was it?

(Objected to.)

Ans. After I returned to town, she told me who she thought best to be witnesses to the will, and I followed her advice, all except Mr. Mitchell, and she didn't know he was there; and so I got him to do it instead of going for another one, as I found him there.

(From this point to close of examination, right to object, in matter of substance, reserved by counsel for defendants, by agreement.)

13 int. Whether or not, while you were at Round Hills, was the draft of any other will made; and if so, by whom? And state the manner in which it was made, and whose it was.

Ans. The draft of my aunt Sylvia's will was made while we were at Round Hills; it was made by myself, under her direction.
57 I wrote it down on a slate, at her direction, by her direction; and then, after it was perfectly satisfactory, I copied it. We were, I should think, two weeks to ten days about it—what time we could find by ourselves. We had not much company—I mean the nurses—what time we could talk without being overheard.

14 int. Whether or not was anything said by either or both of you, and, if so, whom and what, about letting or not letting other people know your agreement, and the nature or execution of your wills? And if any thing was said, what were the reasons, if any, given for it?

(Objected to, also, as leading in form, and because it does not appear that witness's memory has been exhausted as to the subject of last interrogatory.)

Ans. She told me on no account to say anything about it to any body, as they didn't concern any one but ourselves; and she said they would tease her night and day till they found out what was in it, and to see if they had a legacy in it or not, and for her to make another will; and she should call the contract a promise before people; and no religious people, after she had given her promise to her niece, would make her break it.

(Form of narrative resumed.)

When I came from Round Hills, I brought up both of those drafts with me. I brought up two drafts—one of them wasn't quite finished—F. W. P., I., is one of them, excepting the sentence, "also executor of the 2d page of this will." The dates were not in; I thought you meant only the draft; the words "eleventh" and "January" and the signatures of my aunt and the witnesses were not in.

(At this point, 1.15 p. m., there was an intermission of one hour.)

15 int. Whether or not were the words "1st page" and "3d page" on the draft when you brought it up from Round Hills?

Ans. "First page" was not in it, and the words "page" and "third" on the second page were not in it; I mean the "third" under "third page" as they now appear.

16 int. Whether or not, when you made the draft of this will at Round Hills, was the will of your aunt of 1850 before you?

Ans. No; it was not.

17 int. Whether or not did your aunt tell you how she had
58 given her property by the will of 1850, so far as you were concerned. If so, what did she say?

Ans. She said she had given it to my mother, and as my mother was dead, of course it would be mine, and my children's; and in default of any, to charity; I had never seen her will of 1850 at that time

18 int. Was your mother dead when this will at Round Hills was drafted? How old were you when the will of 1850 was drafted?

Ans. My mother was dead when the will of my aunt's of 1862 was drafted. When the will of 1850 was drafted, I was about sixteen.

19 int. At the time this draft of your aunt's will was made at Round Hills, did she or not say anything about your then age, or about your capacity to take care of property, or your incapacity to take care of property, and if so, what did she say?

Ans. She said she would like to have me continue on as she had done—keep it. She said as I was about twelve years older than I was when the will of 1850 was made, I would not need to have it in trust, but employ some one to take care of it, as she had done.

20 int. Was your will marked F. W. P., No. 2, executed and witnessed after you came up from Round Hills, or before? Where was it executed? At what time did you put your signature to it? State the history of its execution.

Ans. My name in black ink was put in before I came up from Round Hills, but the date and my name, in blue ink, and the witnesses' names, were put to it after I came up from Round Hills, at Peleg Howland's. I put my signature to it in blue ink at the time it was witnessed. I wrote it in blue ink over the black one, the nineteenth of September, 1860. I wrote "nineteenth" and "September" in blue ink first, and then my name in blue ink over the black; then the three witnesses signed.

21 int. At whose request, if any, and in whose presence, if any, did the witnesses sign that will?

(Objected to—form.)

Ans. At my request and in my presence, and in the presence of each other, and perhaps of Mrs. Peleg Howland, who may have been present. I took it home that night, and my aunt read it in the morning and was perfectly satisfied with it, and said she would keep it and have it put in her trunk. I never saw it afterwards till after her death.

59 22 int. After the death of your aunt did you see it; and, if so, when, and under what circumstances?

Ans. It was handed to me from my aunt's trunk after her death, a day or so, I think. Mrs. Brownell handed it to me out of the closet door where my aunt's trunk stood, and I handed it immediately to Mr. Green. I asked Mrs. Brownell for some papers—I don't know whether I called it a will or not—some papers of mine with my name on it. One was a long lemon-colored envelope, the other was a copy of my aunt's will of 1862, the second page, with a white envelope, that had. Mrs. Brownell was my aunt's housekeeper, and always kept the key of that trunk. She used to get down and hand things up to aunt.

23 int. Will you look at the paper purporting to be the will of your aunt, marked F. W. P. No. 1, and state when it was executed, if at all, if you know; and in whose presence, and who set their names to it as witnesses, if you know; and in whose presence, if any, the witnesses set their names?

Ans. After my aunt requested me to add those words—first page—and the other words that I have before mentioned, referring to a second page, and making it part of the will, my aunt put her name to the second page. The will was executed on the 11th of January, 1862, by Sylvia Ann Howland, my aunt, in the presence of Peleg Howland, Keziah R. Price, Electa Montagu, and myself; I only leaving to go to shut the door into the hall. Peleg Howland, Keziah R. Price, and Electa Montagu set their names to it as witnesses, in the presence of my aunt and the presence of each other; I was in the room also. My aunt told me to stand by, so that, if she forgot to say it was her last will and testament, to suggest it to her to do it. She said so, but it was very low, and Mr. Howland, sitting on her left hand said, What? I said, Her will. She read over this will after it was executed, the next morning, putting her hand on to a Bible, where the names of her relatives were registered, and gave me the will of my grandfather and great-grandfather, and said that she had promised them to keep it in the family, as they had been particular to keep it also. And she told me to take them to New York, as I was going. My grandfather's, my great-grandfather's, and my aunt's will of the 11th January, 1862, she gave me to take to New York. I have kept them ever since. My grandfather's and great-grandfather's were copies only; my aunt's was the original.

60 24 int. Why was not your aunt's will executed at the same time yours was? Do you know any reason?

Ans. It was at my request. I wished my aunt's to be kept later, because I thought that the will of 1850 was in my favor; and while it had her signature, and after her signature was taken from it, and the codicil joined to it was torn off, then she said I was her heir, having no will; and as she was quite well, for her, and having this one all ready to execute, we had an idea that the later it was executed the stronger it would be.

25 int. Whether or not did your aunt, at the time the draft of her will was made at Round Hills, have any memoranda of any description in relation to her will of 1850? If so, what were they? How did you get the date of that will?

Ans. She had a pencil memoranda, on a piece of paper where she had the birthdays of her family—the date of the will and codicil of 1850—the names of the witnesses to both; the codicil was of later dates, but she had it down that it was part to mother and part to myself, and then to my children, and then to charity, and the codicil had a small legacy of about ten thousand dollars apiece—it wasn't exactly ten thousand dollars—to Thomas Mandell, Charles R. Tucker, and Henry Taber.

26 int. When did you first see that old will of your aunt's of 1850, and under what circumstances? State what was said about it and done about it, and by whom? State what your aunt said about it?

Ans. My aunt sent for me to come down to the Round Hills. She was staying there, and I was in town. This was in August, I think—somewhere near the 1st—of 1861. She said that she had sent for her will, and that Mr. Mandell had brought it over to her; that she had read a little in it, but it was long, and she wanted I should take it back with me and read it over. After she came in town, I told her it wasn't exactly as she had said in her notes—she was reading it when I was looking over her, and after two sittings we finished it, as she was tired—that a part of it did not go to my descendants. Only a part of it went immediately to my descendants, but went immediately in charity; and, as it was a new idea to her, she supposed that she was so nervous at the time that she didn't understand it fully, and saying that these trust wills were so complicated
61 that they had probably misunderstood her. Then the codicil —she was very much surprised to find that Charles Tucker had thirty thousand dollars and Thomas Mandell only ten. She couldn't see why they had made such a mistake as that, as she had known Mr. Mandell a very long time, and that Mr. Henry Taber, whom she only knew very slightly, had twenty. And she was very angry and tore the codicil all up except the dates, so that I might have it to show in case they said that I never had had it. She left the date attached, and the top of the leaves, and the seal. Then she tore off her signatures to the will, to the last, and to the sides, where it was written, and said she wished me to show that old will, to show that I had the whole income after my mother's death, and also, as she had torn her signature off, to show that it was not satisfactory to her.

(4 p. m., adjourned to Thursday, August 23d, 1866, 10 a. m.)

THURSDAY, *August 23d*, 1866—10 a. m.

Examination proceeds.

(Form of narrative resumed.)

I produce the old will of my aunt, of 1850, in the state in which my aunt gave it to me. It has been in my possession ever since, except while it has been in the possession of my counsel. Her signature was in several places, and I imagine in all, on the sides of the will, where it is torn off.

(The paper produced is put in and marked for identification F. W. P., 8.)

27 int. Do you know the handwriting of Mr. Thomas Mandell? If so, will you say whether the paper now shown you is in his handwriting, and whether or not it was found among your father's papers?

Ans. I have seen Mr. Thomas Mandell's handwriting very frequently, and I should say that this paper was in it. It was found among my father's papers.

(Paper objected to by counsel for defendants as incompetent. Form of narrative resumed.)

Mr. Thomas Mandell was my aunt Sylvia's man of business, transacted her business, and attended to her affairs for the last fifteen or twenty years of her life—all the time I was there with my aunt. In the course of that time he had occasion to call upon her frequently for her signature.

62 (Paper in regard to which deponent testified at foot of preceding page produced and annexed; marked for identification F. W. P., 9.)

My aunt has been an invalid for a considerable length of time. Almost from her birth she was not strong, like other people. For somewhere about twelve years before her death, I should think, she had had nurses. Mrs. Brownell, her housekeeper, took care of her before when she had an ill turn, but after she had regular nurses in the house she took rather the place of her housekeeper, although she would sometimes come up and take care of her when they were out. Electa Montagu and Mrs. Brown, I think—Eliza Brown, I think—were her regular nurses when I left and went to New York.

28 int. Will you look at the paper shown you now, marked F. W. P. 10, and say, if you know, by whom it was signed, and whether or not in your presence?

Ans. It was signed by my aunt Sylvia Ann Howland, and in my presence.

29 int. In whose handwriting is it, and at whose suggestion, if any, was it made?

Ans. It was in my handwriting, and at the suggestion of my aunt Sylvia.

30 int. Was it signed by your aunt before or after she executed her will, in 1862; and where was it when that will was executed?

Ans. It was signed before she executed her will of 1862, and it was caught on the first page, that is, sewed on with very fine thread to the first page, about there on the page (the witness laying the "second page" on "first page" of F. W. P. No. 1, a little below the top of the latter.) The thread marks show where it was. The holes in the paper indicate where it was sewed on.

31 int. Were the contents of that paper first written on paper, or what was it written on? Who took part in the preparation of it, and how long were they engaged in it?

Ans. It was first written on a slate; then, afterwards, on paper. I should think that we were somewhere from the first of January to about the eleventh upon it—say the ten first days of January. It was after New Year's when we began it—New Year's day,

63 rather. My aunt requested me to write it, and I wrote it with changes, as she ordered it written.

(The paper F. W. P., 10, above testified to, is produced and annexed; marked for identification as above.)

32 int. Will you look at the paper herewith shown you, and say if you know when it was made, and whether or not at the suggestion of any one, and of whom, if so?

(Objected to—form.)

Ans. I wrote it about the fifth of January, I think, of 1852. My aunt requested me to write a will like the one she attested, with the addition of the second page, which you see in this paper, which I did do, to her perfect satisfaction, as she said. This is the paper.

(Paper put in, and marked for identification F. W. P., 11.)

33 int. If you know, please state why that paper was not executed.

(Objected to: leading in form, assuming a fact not in evidence, and otherwise incompetent in substance.)

Ans. Because my aunt so assured me that they would not get the advantage of her, saying that if she broke her promise to her niece that she had taken from her dying mother to live with her again, that she would be worse than most any one at the House of Correction, because they wouldn't lie to their own relatives, as a general thing; saying that they would not get the advantage of her as long as she had any strength left; that she was willing to pay her attendants double what they would get anywhere else, and have plenty of them to take care of her, as she needed a great deal of care; that when they asked her to make her will she would pacify them by telling them that she would give them money, which would make it for their advantage to keep her alive. If they do get a will out of me it will be after I have no strength to oppose them; and you will see how rapidly I will fade away. If they are bad enough to tease me to make a will, after I have distinctly told them that I have promised not to, any will that they would get me to make, it would take a great deal to satisfy them. And they would have so much of human nature it would be their interest to get possession of their money, being human nature enough to say, Poor Miss Howland, she can't enjoy life, she suffers so much. I felt so assured that it was as much her

64 interest not to make one as mine, to make a will made by them, any of her care takers, that I suggested to her that we might leave out that part called the second page, because it would be very awkward for me to have it recorded, if they did not succeed in having her to make a will—if the care-takers did not succeed. She then requested me to copy the second page on to a separate piece of paper with the addition of "revoking all my wills before and after this one by me made," from the first page of F. W. P, 11.

(The witness now takes F. W. P., 11, and states that the addition is:) "hereby revoking all wills made by me before or after this one."

I was to copy the second page of F. W. P. 11, beginning it something as a will, and ending it something as a will, and the few words here on first page, "hereby revoking all wills made by me before or after this one," which I could attach to a will like this one,

(laying her hand on F. W. P. No. 1,) and regularly referring to it, that I might add a few words to her will. I asked her if I could not add a few words to the unattested copy of her will made at Round Hills; if that wouldn't do as well as writing it all over—and she said yes—and then I did add the words that I have before mentioned. If they did not get the advantage of her then I could detach it, only showing it to Mr. Mandell, and perhaps the judge, and if they did get the advantage of her, telling the judge that it was—that she hoped that she would take them as words that she would say if she was alive.

34 int. What, if anything, did you do in relation to this matter, after this conversation with your aunt?

Ans. She signed the second page; I sewed it on; and after that it was duly attested by witnesses. I sewed it on to F. W. P. No. 1, and this will (pointing to F. W. P. No. 1) was duly attested by witnesses.

35 int. Did anybody, and who, if so, give any directions as to who should be witnesses to your aunt's will?

Ans. She suggested whom she would have. She sent for Mrs. Price. I went, under her direction, to Peleg Howland's store, and asked him to come in on his way up town. Miss Montague was living in the house.

36 int. Whether or not, when the draft of your aunt's will was made at Round Hills, did she or not make any request of you to bestow any part of the estate given you upon her friends and relations? If so, what did she say to you, if anything? If not at the time, did she at anytime, and, if so, when?

(Objected to as irrelevant and otherwise.)

65 Ans. She did, (make any request,) but not that summer—the summer of 1860. I don't remember the first—the exact date of the first—as it is not on it, and it's a long time since. The last time was after the second page was added to her will of 1862. She said that she would have it only on a piece of paper, as she could change them by telling me, without altering her will. I asked her if they should go to the people mentioned there if they had anything to do, were in any way interested in, or made any suggestions about a will later than the will of 1862. She said she would leave it to me to be perfectly satisfactory, if they had anything to do with it or not. She told me also to leave her a copy on thin paper, which I gave to her—the copy—copy of the list of people.

37 int. Was that list made all at one time or otherwise, and how was it made, in pencil or in ink?

(Objected to in point of form, and because no foundation is laid for the introduction of secondary evidence, by counsel for defendants.)

Ans. It was not made all at one time, but first written on a slate, and afterwards changed to paper and pencil.

38 int. Whether or not, before it was changed to paper and pencil, were any changes made in it; and if so, by whose directions, and were they many or few?

(Counsel for defendants desire noted here that they object entirely

to this course of inquiry, as leading the witness to particular subjects as to which answers are desired before the general question as to what was said or done has been put, and the memory of the witness exhausted, and also as calling for alterations or changes of written documents without any evidence from the question that the original writings are lost.)

Ans. Quite a number of changes were made in it, by my aunt's direction.

39 int. Did you preserve the slate on which they were witten, and the writing thereon, or what became of it, so far as you know?

Ans. The slate—I don't know—I have several slates—I can't answer for the identity; but, as I usually rub out what I have written, I presume I rubbed that out as soon as I had copied it on paper, which I have.

66 40 int. Did you preserve a copy of the list as finally made up and furnished to your aunt; and if so, will you produce it and annex it to this your deposition?

(Objected to as assuming a fact not in evidence, and in conflict with facts in evidence. Question withdrawn, and the following question is put:)

41 int. Have you the original paper in pencil made up by you from the slate, a copy of which you furnished your aunt; if so, please produce it, and annex it to this your deposition.

Ans. I have, and produce it.

(Paper put in, marked for identification F. W. P. 12, also a brown envelope for it.)

42 int. Was your aunt accustomed to write papers herself? And if not, state the reason; state what her condition was.

(Objected to—form and substance—as leading, &c. Question withdrawn, and the following put:)

43 int. What was your aunt's habit with regard to writing? State whether she was or not able to write documents, letters, or what the extent of her power was.

Ans. For quite a number of years before her death, she didn't, to my knowledge, write anything but her name. I think she used to write letters to me when I was here in Boston at school; I don't remember how long ago that was; I don't remember of her writing to me after that. Mother used to write to me for her usually, and then, after her death, one of the nurses. The latter part of her life, some days when her nerves were not—when her hands did not shake, she could write very nicely, that is, if she was not hurried—did not feel hurried; and then if she felt hurried, or had one of what she used to call her distressed spells, she could hardly write a word—a letter.

44 int. Did you ever make any other will after the one of September nineteenth, 1860?

Ans. No will or codicil until a will last winter. [Mr. Green got the advice of Mr. Loring that it would make no difference—Mr. F. C. Loring.]

(Part in brackets objected to by defendants.)

45 int. Did your aunt ever give you any notice of the making by

her of another will after that bearing date the eleventh of January, 1862, or return your will to you through Mr. Thomas Mandell, or in any other manner?

67 Ans. She never gave me any notice, through Mr. Thomas Mandell or any one else, that she had made a will later than the will of 1862, which she had given me. She neither returned my will to me, neither by Mr. Thomas Mandell nor by any one else.

(Intermission—1 p. m. to 2 p. m.)

46 int. Will you look at the yellow envelope now produced to you, and say, if you know, what it is, and, if it was found after your aunt's death, where, and what it contained?

Ans. I gave my will to my aunt in this envelope; it was found after my aunt's death, in her trunk, by Mrs. Brownell, and given to me. I found my will in this same envelope, when it was opened, a few minutes after, by Mr. Green, after Mrs. Brownell handed it to me.

(Paper put in, marked for identification F. W. P. 13.)

47 int. You have stated that a copy of your aunt's will of 1862, the second page, was found by you after your aunt's death, with a white envelope. Will you state whether you have the same now in your possession, and if so, produce it?

Ans. This is the white envelope, (producing it,) and this is the second page, (producing it.) The copy got destroyed—the copy of my aunt's will of 1862--by mistake. It was on the table one evening, and we got laughing, and it got tumbled up; and I took it up by mistake, and was tearing it up and throwing it into the fire; and this (producing it) is the fragment that was left. I happened to notice what it was, and so I saved what I had in my hand, or what had not fallen into the fire I picked up. I tore it up and threw them into the grate, and then I remembered what it was, and this piece had not got burnt up, and I just seized it. Mr. Green was there, no one else.

(The papers are put in, marked for identification as follows: the white envelope, F. W. P. 14; the second page, F. W. P. 15; the fragment, F. W. P. 16.)

48 int. When were these papers, this envelope, and its enclosures found?

Ans. The white one was found the evening previous to the will. We were looking for the one in yellow.

49 int. By whom was the paper marked F. W. P. No. 15 signed, and whether or not in your presence, and at what time of day? And at what time of day was the other, marked F. W. P. No. 10, signed?

68 Ans. Paper F. W. P. 15 was signed by my aunt Sylvia Ann Howland in the morning of the day the other one was signed—the second page, No. 10—and in my presence; F. W. P. No. 10 was signed almost immediately after tea, in my presence, the day the will was attested.

50 int. How came there to be two of the second pages of the will signed by your aunt? State what, if anything, was said about it, and by whom, and to whom?

Ans. My aunt requested to have two written, as she wrote differ-

ently at different times. She wished to have one copy kept for herself—to keep one copy, and the other I was to take away with me.

51 int. Whether or not, when the will of your aunt was executed, were one or both of these second pages attached to it, and if so, in what manner?

Ans. They were both attached in the same manner—by a fine needle and thread passing through both of the second pages and the will of my aunt of 1862.

52 int. When were they detached, and by whom, and what, if anything, was said or done by your aunt in regard to it, and what became of the one and what became of the other?

Ans. They were detached the next morning after the will was attested, by myself, in my aunt's presence. She told me to take the one marked F. W. P. 10 to New York, and if there was another will appeared, to attach it to the will as it was when it was attested. The other one she asked me to enclose, with a copy of her will, in an envelope, and give to her, which I did do.

53 int. What did your aunt say on the subject of selecting for you the one which she gave you, if anything?

Ans. She said it looked more like the signature to the will—the will of 1862—as it was written nearer the time of her writing the other; that I had better take that one.

54 int. Why was one signed in the morning and one in the evening? If any reason was given by any one, what was it?

Ans. As soon as I had finished writing the first one, I took it down and she signed it, and then when I had finished writing the other one, I took tea, and then she signed it.

55 int. What was the age of your mother when she died, and at what time did she die? What was the age of your aunt when
69 she died, and at what time did she die? What was the age of your father when he died, and at what time did he die? When were you born?

Ans. My mother died in February, 1860, either the 21st or the 20th. I think it was the day before her birthday. She was then about 51 years old. My aunt was about 58 when she died. She died the second of July, 1865. My father was about sixty-five when he died. He died the fourteenth of June, 1865. I was born in 1834, November, about the 20th.

56 int. At the time of the execution of your aunt's will of 1862, were you about to go to New York, and, if so, when did you go?

Ans. I was expecting any day to go to New York, and I went very soon.

57 int. At the time you left for New York, who was your aunt's attending physician?

Ans. Dr. William A. Gordon. He had been her attending physician a short time. Dr. Paul Spooner had been the regular family physician. Dr. Gordon began to come a very little while after my mother's death, in 1860. A very few times the first year, and more frequently after.

58 int. After the two second pages of the will were detached by

you, on the morning after the will was executed, as you have stated, was either of them ever attached to the will, and which, and if so, by whom and when and by what method, and how did it become again detached?

Ans. The first one that was spoken of, No. 10, I think, was attached to the will, by myself, by a thread and needle, as it had previously been done, as my aunt requested me to do so, if there appeared a later will, the evening previous to the day when Mr. Green took it down to show to my counsel. A number of people looking at it rather loosened it, and I thought it was going to tear, and took it off. It was hanging loosely.

(Direct examination of this witness closes here, and thereupon the defendants move the examiner that for the purpose of examining the several exhibits which have been put into the case to-day, principally this afternoon, the further examination of the witness be continued until Monday morning next at 10 a. m.

Motion made Thursday, Aug. 23, 1866, 3.40 p. m.

Counsel for plaintiffs object upon the ground that it is not
70 practicable for one of the counsel for the plaintiffs to attend at that time. We do not object to defendants taking until tomorrow at twelve o'clock to examine the exhibits, then to proceed with the cross-examination until it is finished. We also object that the ground of the application applies only to cross-examination upon these exhibits, and that under no circumstances could it be a ground for application to postpone the entire cross-examination, but only so much of it as applies to those exhibits.

By agreement, before ruling, examination postponed to Saturday, Aug. 25, 1866, 9.30 a. m.; cross-examination of this witness to be finished by 2 p. m.

4.05 p. m. Hearing adjourned as above.)

(From point noted on page eleven to the close of this direct examination, all questions and answers objected to by counsel for defendants, under right reserved, for matter of substance.)

SATURDAY, *August* 25, 1866—9.30 a. m.

Hearing proceeded.—Cross-examination commenced.

1 cross-int. After the death of your mother, in 1860, did you execute a release to Thomas Mandell, trustee?

(Objected to by counsel for plaintiffs, the writing not being produced, and the cross-examination to a writing being commenced without putting the writing into the hands of the witness.)

Ans. I have heard that I did, but forgotten it, and I have requested to see the paper, but have not been able to see it.

2 cross-int. When and where was the instrument which you call second page of the will first written upon paper?

Ans. The one that was attached to the will when I sent it to my counsel was written at my aunt's house the day the will was executed and attested—the afternoon.

3 cross-int. When and where were the contents of that second page first written upon paper?

Ans. It was written somewhere after the first of January—I think somewhere about the fifth, and it was first written on—the time that I wrote the will with the first and second page in—written on paper—

71 a copy like the one that I had here the other day that was not attested by my aunt with the second page in it; it's almost word for word like the one attached, except the words I spoke of the other day. The contents were first written on paper at my aunt's house.

4 cross-int. Look upon this paper, Exhibit F. W. P. No. 11, and say whether that is the paper upon which the contents of the second page were first written.

Ans. It was not the first time it was put on paper.

5 cross-int. State whether you have the paper on which the contents of the second page were first written, and if so, produce it.

Ans. I have not. I burned it.

6 cross-int. Had the paper now shown you, marked F. W. P. 15, been folded before you wrote upon it?

Ans. It had.

7 cross int. What was the date of the paper marked F. W. P. 11, which has been erased?

(Question objected to, on ground that it assumes that date has been erased, whereas there is no ground for such an assumption except in regard to one word.)

Ans. I don't remember—there was two days when we spoke of having the will attested, and I might have put it down, and then, when the day was changed, erased it, the day or the paper, as aunt concluded to attest the other one with the additions to it, instead of this one, at my request.

8 cross-int. Have you any doubt that you did erase the day of the date of that paper?

Ans. I don't remember exactly.

9 cross-int. Have you any doubt that you did erase the day of the date of that paper?

Ans. I suppose I did erase it, if it is erased, as there was two times.

10 cross-int. Have you any doubt that you did erase the day of the date of that paper?

Ans. I say again that, if it is erased, I suppose I must have erased it, as there was two days: the day was changed.

11 cross-int. Mr. Mandell having now come in, will you look at this paper which he has produced, and say if you signed it?

Ans. I didn't remember I had signed it. They had told

72 me that Mr. Davis was a witness to my signature on, I suppose, this paper; and Mr. Green and I asked him if he remembered it, in New York. He said he would look at it; he didn't remember, but would look at it the next time he went down to New Bedford. He did look at it, and said that it was his signature. I say I don't remember it.

12 cross-int. Will you look at the signature, and say, upon your oath, whether you did or did not sign it?

Ans. I don't remember it.

13 cross-int. Examine the signature, and say whether or not that is your handwriting.

Ans. It might, and it might not be.

14 cross-int. Is it, or is it not?

Ans. I don't know.

15 cross-int. Examine the paper again, and say if the signature above your name is the signature of your father.

Ans. I do not know by the signature; but my father said he had given some such paper to Mr. Mandell. I presume it is. He said he had given some such paper with his signature.

(Paper above inquired of put in, and marked for identification F. W. P. 17.)

16 cross-int. How long after the paper which is called second page was written, did you write the paper marked F. W. P. 11?

(Plaintiffs request counsel for defendants to point out to the witness what paper is meant by the words "called second page" in the question, in order that the witness may not be misled. Counsel for defendants thereupon alter the question, so as to read as follows: How long after the paper which is called second page, that is, the first or original second page, was written, did you write the paper marked F. W. P. 11? Counsel for plaintiffs request counsel for defendants to explain to the witness whether by the words "first or original second page" they mean to refer to the first draft that was made on paper of the contents of the second page, or to the first draft thereof which was signed. Counsel for defendants, the witness having testified this morning as to the first draft or original of the paper called the second page, and as to the time when it was written,
and the disposition that had been made of it, see no reason to
73 modify the question. Plaintiffs object to the question. Question is thereupon put, as altered on preceding page.)

Ans. Any time within a day or so. It might be the same day. I mean the one that was like that, (holding out F. W. P. 11;) the same kind of paper as that (showing F. W. P., 11, as before) really in the will, not attached to it.

17 cross-int. In what room was the paper marked F. W. P. 10 signed, as you have stated, by your aunt?

Ans. In my aunt's room—her chamber where she slept.

18 cross-int. In what room was the paper marked F. W. P. 15 signed by your aunt, as you have stated?

Ans. In her sleeping room.

19 cross-int. Were those papers shown to the attesting witnesses to the will of your aunt—Exhibit No. 1?

Ans. I did not show them to them.

20 cross-int. I repeat the question.

Ans. I did not show them.

21 cross-int. I repeat it again.

Ans. I suppose not. I didn't show them to them.

22 cross-int. Were they seen by the attesting witnesses, to your knowledge?

Ans. I didn't show them to them. I don't suppose they saw them.

23 cross-int. Were they purposely concealed by you from the attesting witnesses?

Ans. My aunt saw them, and I do not suppose that the witnesses saw them. I didn't expect that they would see them. I hoped the witnesses wouldn't see them. My aunt and I agreed to have them put there, and I hoped they wouldn't see them.

24 cross-int. Was it your intent and purpose, in arranging the papers, so to arrange them that these papers, 10 and 15, should not be seen by the attesting witnesses?

Ans. I arranged them, hoping they would not see them. (The question being read again, the witness answers:) I arranged them, hoping and expecting they would not see them.

25 cross-int. Did you not arrange them, intending they should not see them?

Ans. I arranged them with the intention of not letting them
74 see them if it was possible.

26 cross-int. At what time in the evening was paper No. 10, which you now have in your hand, signed as you have said?

Ans. Somewhere between, I should think, half-past five to seven. I don't remember the exact time. I don't think that I can put it any nearer.

27 cross-int. State the shortest interval of time between an hour and hour, or an hour and fragments of an hour, within which you are willing to swear that instrument was signed.

Ans. I should say it was anywhere from half-past five to about seven.

28 cross-int. Is that as near as you can get it?

Ans. It was as near as I would be willing to swear to it.

29 cross-int. State your best recollection.

Ans. Well, as I said before, as near as I would be willing to take my oath, it was anywhere from half-past five to about seven.

30 cross-int. Was it nearer seven than half-past five?

Ans. I didn't look at the clock, and I only judge by circumstances, and therefore that's as near as I would be willing to say. I might say that I thought it was nearer to seven than half-past five, but I would not be willing to take my oath on it, as I don't know.

31 cross-int. How long after that time was the will, Exhibit No. 1, signed? I speak of the paper purporting to be the will of your aunt.

Ans. The witnesses have said that it was about eight o'clock. They said it was about eight, and I think so, and the other must have been signed previously—a short time previously.

32 cross-int. How long before the will was signed, and where were the two papers—10 and 15—attached to the will, as you have stated?

Ans. No. 15 was signed by my aunt. (The witness's attention being here called to the question, she says:) The papers No. 10 and

15 were attached to my aunt's will in a short time after paper No. 10 was signed by my aunt. They were attached in my room.

33 cross-int. Was any one present when paper No. 10 was signed, excepting your aunt and yourself?

Ans. No one, not within view.

34 cross int. Did you ever say to any one that Keziah Price was present when either of those papers was signed—No. 10 or No. 15?

75 Ans. I never said to any one that she was present.

35 cross-int. Have you anything more to say in answer to last question?

Ans. No, I haven't.

36 cross-int. Did you believe, in the winter of 1862, that any persons having charge of your aunt, as nurses or otherwise, would for any reason seek to shorten her life?

(Objected to, as incompetent.)

Ans. My aunt was more timid than myself. I went away, I think, shortly after the will was signed. I was not there, I think. I think I went to New York. I was getting ready to go there. I don't remember what I believed in the winter of 1862. I don't remember all I believed.

37 cross-int. I repeat the question.

Ans. I don't remember all my thoughts in the winter of 1862.

38 cross-int. Since the death of your aunt, have you said to Thomas Mandell that your aunt ought to have given him twice the amount given by the will which has been admitted to probate, or words to that effect?

(Objected to, as incompetent.)

Ans. Do you mean the two hundred thousand dollars, and the trustee, and all that, and the fifty thousand to his family, and the income? I mean what money came from being trustee, and being executor. The son was the trustee. In the family, I meant.

39 cross-int. I mean the legacy of two hundred thousand dollars given by the will to Mr. Mandell.

Ans. I don't remember. All I had free of the estate, until the trust fund, was aunt's gold watch.

(The question being repeated, the witness answers:) I don't remember—I said that, first.

40 cross-int. Did you know that it was by the labors of Thomas Mandell that your aunt's property was taken care of and increased?

(Plaintiff's counsel give notice that they do not consider this cross but direct examination, and that they object to the question, for incompetency.)

Ans. I knew that it was by his assistance—that he very often asked the advice, very frequently, of my father.

41 cross-int. In detailing the several conversations with your aunt in giving your testimony in chief, have you given the statements of your aunt in the words used by her?

76 Ans. All the important points, I have—the exact words of

my aunt, and the unimportant, I think, nearly so, too. I should think I had.

42 cross-int. State what became of the thin-paper copy of the gifts to relatives, which you spoke of.

Ans. She put it in her spectacle case, to hide it away. She said they sometimes looked through her things, over her things, when they thought she was asleep. That was the last I saw of it.

43 cross-int. What was the date of the will made by you since the death of your aunt? Please produce a copy of it.

(Counsel for plaintiff advises the witness that she is not obliged to divulge her private affairs by producing a copy of the will. Also, that she may exhibit it to counsel for defendants, so far as to show the date. Counsel for defendants objects to the mode of advising the witness, as argumentative.)

Ans. I should think it was about six weeks to two months after Thanksgiving, last winter.

44 cross-int. Please produce a copy of that will.

(Counsel for plaintiff notifies witness again of his advice as above.)

Ans. I haven't it here. (Counsel for plaintiff advises the witness to agree to show the will so far as to show the execution and date, if that will be satisfactory to defendants.) (Answer continues:) It would be impossible to show the will, but I will consult with the three witnesses about the date.

45 cross-int. What do you mean by its being impossible?

Ans. Because I haven't got it here with me.

46 cross-int. Is it impossible for you to procure the original will, or a copy of the will?

Ans. It is impossible for me to produce the original will to-day or a copy of it to-day, as it's not here.

47 cross-int. State in what respects the will made by you last winter differed from the will of September 19th, 1860.

(Counsel for plaintiff offer to admit that the will made last winter is substantially and materially different from that made by Miss Robinson, September 19th, 1860, if this admission is accepted in lieu of an answer to the interrogatory; otherwise the admission is withdrawn. The admission is so accepted.)

48 cross-int. Since the death of your aunt, or before her death, have you made any other will than the one last spoken of?

77 Ans. The only wills I have ever made in my life was the one I made the 19th of September, 1860, at the request of my aunt, which she kept, and the one I made a short time after Thanksgiving, last winter.

49 cross-int. Since the day of the funeral of your aunt, have you had possession of the will of the 19th of September. 1860? Did you take possession of it on the day of the funeral, and did you ask the permission of Mr. Mandell to take it?

Ans. I took possession of it one morning as it was given to me about the time of the funeral. I don't recollect whether it was the day of the funeral or not, but it was about the time of the funeral. I have had possession of it ever since I took possession of it then,

except when it has been with my counsel. I did not ask the permission of Mr. Mandell to take it, because my aunt had previously directed me to do so. I didn't for a moment dream—I would have been perfectly willing to, if I had thought it had been my duty. I meant that I didn't for a moment dream that it was necessary for me to have asked Mr. Mandell.

50 cross-int. What time in the morning did you get that will? Fix, as nearly as you can, the time.

Ans. Some time between the periods of half an hour after breakfast and about an hour or half an hour before dinner. I am sure the judge will excuse my remembering the exact time, as I had lost two of my nearest relatives, my aunt and my father, and one of my best friends, within less than three weeks—about three weeks—I didn't look at the clock every few minutes.

51 cross-int. How long after the return from the funeral of your aunt was it that you got into her trunk, or access to her trunk, and was examining her papers?

(Objected to as incompetent.)

Ans. I don't know whether it was before the day or the day after the funeral. It was in the morning.

52 cross-int. Did you have such access to the trunk more than once, and did you not go to the trunk the evening of the day of the funeral of your aunt?

(Objected to as immaterial and incompetent.)

Ans. The evening of one of the days. Mrs Brownell went to my aunt's trunk, and being quite an old lady, say, I should think,
78 seventy or so, or more, she couldn't see very well, having a small light, and Mr. Green being down stairs waiting for me, she proposed waiting till next morning, when it was light, which I acceded to. I didn't go to the trunk—it was Mrs. Brownell.

53 cross-int. Look at that Exhibit No. 13, and state whether before that paper was taken from the trunk, if it was taken, Mrs. Brownell went to the trunk at your request or within your knowledge.

Ans. She did, the evening previous.

54 cross-int. After that trunk was first opened, after the death of your aunt, who had the charge of its key?

Ans. The first time it was opened to my knowledge was the evening previous to when this yellow envelope and the will was found, of mine. It was opened by Mrs. Brownell, who had possession of the keys, and she suggested waiting till morning, and I suppose she had the keys. I didn't. She had had them previously, and I suppose she had them then. I don't know. I hadn't.

55 cross-int. How long after the death and funeral of your aunt, if you know, did Mrs. Brownell have possession of that key?

Ans. The morning my will was found in the yellow envelope, after she had handed out several papers, either that morning or some time after, she let me have the key. I don't know how long, after the death and funeral of my aunt, Mrs. Brownell had possession of that key.

56 cross-int. State to the best of your recollection.

Ans. I don't know how long.

57 cross-int. When did you first hear that your aunt had made the will at Round Hills which has been admitted to probate?

Ans. I never was notified. I only heard from a servant girl that another servant girl had said that they thought that Miss Howland had made a will.

(The witness asks to see Mr. Mandell's letter, and sees it and answers:)

Ans. I think it was in July, 1864.

58 cross-int. Have you ever said to anybody that you knew about the making of the will at Round Hills about the time it was made?

(Objected to as incompetent.)

Ans. No; I never did.

59 cross-int. Did you ever say to Pardon Gray that you
79 knew about the making of that will at Round Hills about the time it was made, or words to that substance and effect?

(Objected to as incompetent.)

Ans. No; I never did. He used to drive for my aunt. He was my aunt's coachman, and I was not in the habit of talking about business matters with him.

60 cross-int. Did you say to Mr. Pardon Gray, that they needn't try to keep that matter secret, for I knew about it at the time, (referring to the will made at Round Hills,) or about the time?

(Objected to as incompetent.)

Ans. I don't know when that was supposed to be said, if you'll just tell me what he means by it, (to the magistrate,) for I don't understand it. I was in New York, I thought. I never said so to him. (This on the question being read again.)

61 cross int. Did you ever say to Mr. Pardon Gray that they needn't have tried to keep that matter, that is, the will made at Round Hills, secret, for you knew about it at the time?

(Objected to for form and as incompetent.)

Ans. No.

62 cross-int. You say you never conversed with Mr. Gray, your aunt's coachman, about your aunt's business. Now, did not you and Mr. Green call upon Mr. Pardon Gray, and if so, give the date, as near as you can, and have an interview with him on the subject of your aunt's will, his interest under it, and suggesting to him whether he wouldn't rather have the money outright instead of in trust?

(Objected to for form, and as incompetent.)

Ans. I never said—I said that I was not in the habit of conversing with my aunt's coachman; but Mr. Green and I, thinking of living in New Bedford, thought of buying a pair of horses, and I suggested letting Mr. Gray buy them for him, or asking if he knew of a pair. So, one day, when he had a hired horse and buggy, he stopped at Mr. Gray's, and asked him about horses. I was with him. It was some time in the summer of last year, 1865, when we were down at New Bedford. I didn't talk to him. Mr. Green spoke to him about it, about the will.

63 cross-int. Did Mr. Green say to him, or did you, that he

80 wouldn't like to go with his hat to the trustees or guardians every time he wanted his interest, or words to that substance or effect?

(Objected to for form and as incompetent.)

Ans. I don't remember saying anything about it—I am sure I don't remember anything about a hat—I don't remember hearing him say anything about—anyway—about a hat.

64 cross-int. Was not this visit made to him by you and Mr. Green with a view to his being a witness for you?

(Objected to, form and substance.)

Ans. I am sure it was for the horses, because Mr. Green afterwards had a pair sent down from Vermont, which we used all winter in New York.

65 cross-int. I repeat the question.

Ans. I never thought of it—I don't know what Mr. Green did. He must answer for himself.

66 cross-int. Was he your aunt's coachman? Did you call him by his christian name, or he you by yours? Did he call you Hetty, or did you call him Pardon?

(Objected to, form and substance.)

Ans. In New York he would be called a coachman. In New Bedford, perhaps, he would be called a driver. He often called me Hetty. In country places they are not so particular—more familiar than they are in other places. I called him Pardon sometimes.

67 cross-int. Did you have an interview before the hearing on the probate of your aunt's will at New Bedford, in August, 1865, with the judge of probate of that county, in relation to the probate of the will and his action thereon?

(Objected to.)

Ans. I had an interview with him some time in the summer, in relation to the probate of the will and his action thereon. I couldn't give the date of it; but I think he is connected by marriage with Dr. Gordon in some way, my aunt's physician.

68 cross-int. Are you married or single?

Ans. I am single.

(Cross-examination here ends—2 p. m.

Hearing continued to Monday, August 27, 1866—11 a. m.)

81 MONDAY, *Aug.* 27, 1866.

Upon hearing the deposition read, on reaching the foot of page 2, the deponent says: "I am not sure about their being first cousins, and I am not sure about their being ten. They did not use to come to the house much." (Judge Thomas, of counsel for defendants, directs that every word that falls from the witness as she hears her deposition read, every suggestion that she makes, be recorded.) On page 3, I correct by saying that Isaac Howland was my grandfather's wife's father. My grandfather's father was named Gideon, I think. My aunt's father was the same Gideon Howland who was my mother's father, and my aunt's father's wife's father was

the same Isaac Howland. I desire to correct the statement, on p. 36, "We got laughing," and to say instead, "We were clearing off the table." We were not laughing.

HETTY H. ROBINSON.

UNITED STATES OF AMERICA,
District of Massachusetts:

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States, in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., special examiner to take the testimony of such persons as might be called as witnesses by the plaintiff in said case, according to the terms of the agreement between the parties, bearing date Aug. 6th, 1866, and filed in the clerk's office of the said court, in the city of Boston, do certify that on the twenty-second, twenty-third, twenty-fifth, and twenty-seventh days of August, 1866, I caused to appear before me Hetty H. Robinson, plaintiff in the above-entitled cause, a witness in behalf of herself therein; and that she, having been duly sworn to testify the whole truth and nothing but the truth relating to the matter at issue in the same, her several answers to the interrogatories propounded to her were by me reduced to writing in her presence, and by her, on said twenty-seventh day of September, A. D. 1866, subscribed in my presence, in
82 the presence of the counsel of both parties, and are hereto annexed. And that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said Francis W. Palfrey, special examiner as aforesaid, have hereunto subscribed my name, at the said city of Boston, this eleventh day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

Circuit court of the United States, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents.

Deposition of Oliver Prescott.

Oliver Prescott, of New Bedford, Massachusetts, counsellor-at-law, being duly sworn, deposes and says as follows:

The paper now handed to me, marked F. W. P. 7, was prepared by me at or about the time of the date. I notice two or three words here which are not mine. They are in blue ink. I prepared it at the request of Mr. Charles R. Tucker. He called at my office and requested me to prepare the draft of a will for Miss Hetty H. Robinson. He had some pencil memoranda, and left them with me. I think they were in Mr. Tucker's handwriting. I have never seen the draft afterwards till last Monday. When it was made I handed it to Mr. Tucker.

OLIVER PRESCOTT.

83 UNITED STATES OF AMERICA,
District of Massachusetts:

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States, appointed special examiner in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., as by a certified copy of said order hereto attached appeareth, do certify that on the twenty-seventh day of August, A. D. 1866, I caused to appear before me Oliver Prescott, a witness on behalf of the plaintiff in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, in the presence of the counsel of both parties, and are hereto annexed, and that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the said city of Boston, this eleventh day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

84 Circuit court of the United States, district of Massachusetts.—
In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL *et al.*, respondents.

Deposition of Louisa H. Thompson.

Louisa H. Thompson, of New Bedford, Massachusetts, being duly sworn, deposes and says as follows:

I belong in New Bedford. I have lived there ten years. I was born in Warren, Rhode Island. I was the nurse or attendant of Miss Sylvia Ann Howland, in 1856, for eight months. She used to frequently talk about her will, and how she disposed of her property.

(Here the defendants object to the question, in answer to which last sentence was given, for substance.)

She used to say that she had given her property, all, to Mrs. Robinson, Hetty, and Hetty's children. That was Hetty's mother. I heard her say it a great many times.

Int. Did she say anything about from whom she had derived her property, and how she wished it to go?

(Objected to, substance.)

Ans. Not any further than what I have told you, that she wished it to go to Mrs. Robinson, Hetty, and Hetty's children.

Cross-examination:

Cross-int. Did Miss Howland ever say anything to you about her having given a third of her property to charity?

Ans. No; never.

Cross-int. Did she speak of having made a will?

Ans. She did.

(Narrative form resumed.)

No one else was there as nurse while I was. Since I left Miss Howland's, in 1856, several people have spoken to me about conversations I had with her about her will. I don't remember when first. I don't recollect when Miss Robinson first spoke to me about them, that is, asked me if I knew anything about it.

LOUISA H. THOMPSON.

85 UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States appointed special examiner in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., as by a certified copy of said order hereto attached appeareth, do certify that on the twenty-seventh day of August, A. D. 1866, I caused to appear before me Louisa H. Thompson, a witness on behalf of the plaintiff in the above-entitled case; and that she having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, her several answers to the interrogatories proposed to her were by me reduced to writing in her presence, and by her subscribed in my presence, in the presence of the counsel of both parties, and are hereto annexed; and that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the said city of Boston, this eleventh day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, special examiner, as hereinbefore set forth, do hereby certify that the papers and paper writings hereto attached, marked, respectively, "F. W. P," and numbered from "1" to "17," both inclusive, are the same papers and paper writings that were produced at the taking of the foregoing depositions, and that are therein mentioned and referred to.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the city of Boston, this seventeenth day of September, A. D. 1866.

FRANCIS W. PALFREY,
Special Examiner.

86 *Exhibit F. W. P., No. 1.*

[First page.]

Be it remembered that I, Sylvia Ann Howland, of New Bedford, in the County of Bristol, and Commonwealth of Massachusetts, of lawful age, and of sound and disposing mind and memory, do make, publish and declare this my last will and testament, in manner following, to wit:

First. I give and bequeath unto my niece Hetty Howland Robinson, all my Real and Personal estate, goods, and chattels of every discription including the Round Hill Farm and every thing thereon, House on the cor of Water and School and First and every thing on and beloing land and buildings to her the said Hetty H. Robinson and her children and assigns forever.

Second. If the said Hetty H. Robinson dies without children or grandchildren before me I wish it to go the Charity Schools and institutions named in will of 1856—3 month, 4th day—with these trustees—Thomas Mandell, Cornelius Howland, Henry Taber.

[Third page.]

Third. I appoint Thomas Mandell of New Bedford, Executor of this my last will and testament, also Executor of the 2d page of this will.

In witness whereof I have hereto set my hand and seal this eleventh day of Janury, in the year of our Lord one thousand eight hundred and sixty-two.

SYLVIA ANN HOWLAND, & A SEAL.

Signed, sealed, published and declared by the said Sylvia Ann Howland as and for her last will and testament in presence of us who at her request and in her presence have hereto set our names as witnesses.

PELEG HOWLAND, & A SEAL.
KEZIA R. PRICE, & A SEAL.
ELECTA MONTAGUE, & A SEAL.

87 *Exhibit F. W. P., No.* 2.

Be it remembered that I, Hetty H. Robinson, of New Bedford, in the County of Bristol, and Commonwealth of Massachusetts, of lawful age and of sound and disposing mind and memory, do make, publish, and declare this my last will and testament, in manner following, to wit:

First. In case I shall have any issue, children or grandchildren, living at the time of my decease, I give, bequeath, and devise unto such issue one half of all my property and estate of every description, real and personal, to them and their heirs forever; and in case all said issue shall be in equal degree,—that is, all children or grandchildren,—they shall take equally, otherwise they shall take by right of representation.

Second. The other half of my said property and estate, I give, bequeath, and devise unto Edward Mandell, Abner Davis and Benjamin Irish, of said New Bedford, their heirs and assigns and successors in said trust as trustees for the following trusts and purposes, to wit: That the said trustees shall invest the said property in some safe stock, mortgages, or other safe and secure manner, according to their best judment, and shall receive the interest and income of the same, and shall pay over the same annually to my children equally during their lives; and upon the decease of any child, his or her share of

said trust fund shall be paid over to his or her children in equal shares; but in case such child shall leave no children or issue living at his or her decease, then said child's share shall go to my other children, and the children of any deceased child.

And in case either of the above named trustees shall decline to accept said trust, or shall decease or resign before the objects thereof are accomplished, the other trustees shall fill said vacancy by the appointment of another person in his place, who shall have and possess all the rights and powers of a trustee herein appointed, and this shall be done from time to time as vacancies occur till the objects of said trusts are accomplished.

Third. But in case I shall decease without leaving children or issue living at my decease, then I give, bequeath and devise all the rest, residue, and remainder of my said property and estate of every
88 description to the Home for Children, located in the City of New Bedford. By property or estate, I mean what I have now and what I may have before my decease.

Lastly. I do hereby nominate, constitute and appoint Edward Mandell, Abner Davis, and Benjamin Irish, of New Bedford, executors of my last will and testament.

In witness whereof, I have hereto set my hand and seal this nintheth day of September, in the year of our Lord one thousand eight hundred and sixty.

HETTY H. ROBINSON, & A SEAL.

Signed, sealed, published and declared, by the said Hetty H. Robinson as and for her last will and testament in presence of us who at her request and in her presence have hereto set our hands as witnesses.

PELEG HOWLAND. [SEAL.]
EDWD. S. TABER. [SEAL.]
BENJAMIN MITCHELL. [SEAL.]

Exhibit F. W. P., No. 3.

An Indenture of three parts made and concluded this twenty-second day of February, in the year of our Lord, One Thousand, Eight Hundred and Thirty Four, by and between Edward M. Robinson of Providence, in the State of Rhode Island, Merchant, and Abby S. Robinson wife of the said Edward M. Robinson, of the first part; Thomas Mandell, of New Bedford, in the Commonwealth of Massachusetts, Merchant, of the second part, and Gideon Howland, of said New Bedford, Merchant, of the third part.

Whereas the said Abby S. Robinson is one of the residuary legatees under the will of her Grandfather, Isaac Howland, late of said New Bedford, deceased, and whereas it has been agreed that a portion of the personal property devised to the said Abby S. Robinson by the will aforesaid shall be secured in such a manner that it
89 shall not be exposed to be lost, if the said Edward M. Robinson should become unfortunate and embarrassed in any of the various enterprises in which he may engage. Now to carry into

effect the agreement aforesaid, This Indenture Witnesseth, that, in consideration of the premises, the said Edward M. Robinson hath given and granted and by these Presents doth give and grant unto the said Thomas Mandell the sum of Forty —— Thousand Dollars, part of the personal property so devised as aforesaid by the said Isaac Howland; and doth by these Presents, constitute and appoint the said Thomas Mandell, his executors and administrators, his lawful Attorney or Attorneys, irrevocable, with full power and authority to ask, demand and receive of Gideon Howland, of New Bedford aforesaid, Merchant, Executor of the said will of the said Isaac Howland, the said sum of Forty Thousand Dollars, and in the name of him, the said Edward M. Robinson or otherwise, to execute and deliver all such releases and discharges upon the payment of said sum, as to the said Thomas Mandell, his executors or administrators may seem proper or expedient.

To Have and to Hold the said sum of Forty Thousand Dollars to him, the said Thomas Mandell, his executors and administrators for and during the whole term of the joint lives of them the said Edward M. Robinson and Abby S. Robinson, *upon Trust*, however, for the following purposes, to wit:

That the said Thomas Mandell shall, upon the receipt of said sum of money from the said Executor as aforesaid, forthwith proceed to invest the same in real estate, in the public funds or in bank or insurance stocks, in the manner he shall deem most for the advantage of all concerned, and thereof he shall take deeds or certificates declaring that he holds the same in trust; or if the said Thomas Mandell shall think it expedient he may loan the whole or a part of said sum to individuals, upon personal or other security; and periodically, as rents, interests and dividends shall become payable and be paid, he shall invest the same in like manner for the account of the said Abby S. Robinson. Provided, however, that if the said Abby S. Robinson shall prefer it, the said Thomas Mandell shall pay any part or all the income of such investments, from time to time into the hands of the said Abby S. Robinson, to be disposed of as she shall please, he taking her personal receipt therefor, instead of so investing the same as aforesaid.

90 And the said Thomas Mandell, in consideration of the premises and of his desire to serve and oblige the said Edward M. Robinson and Abby S. Robinson, does, hereby, for himself and his executors and administrators accept the said trust and the grant herein made upon the terms and conditions herein expressed, and covenants that he will truly and faithfully perform and execute all and singular the said trust in the manner that he shall deem most for the advantage of all concerned: That he will keep true and plain accounts of his doings in the premises and from time to time on reasonable demand, that he will furnish true copies of such, his accounts, to each of them the said Edward M. Robinson and Abby S. Robinson; that he the said Thomas Mandell, his executors or administrators will not waste, injure or convert to their

own use or suffer to be wasted, injured or converted to their own use any of the property conveyed or herein provided to be conveyed to them in trust, or the income or proceeds thereof. And that at the termition of this trust, they will convey, assign and deliver all the real estate, funds, stocks, choses in action and property which he or they may so hold in trust to the said Abby S. Robinson and her assigns, if she shall then be living.—And if she shall have then deceased to her heirs at law, or to such other person or persons as she shall by any instrument signed and sealed by her in the presence of three witnesses, have directed and appointed.

And it is further agreed that the said Thomas Mandell, his executors and administrators shall reserve out of said income reasonable sums to pay them for the management of this trust and to reimburse them for all the charges and expences concerning the same. And that they may at their discression at any and all times sell or exchange any and all the real estate, funds, stocks, securities or property of any kind which they may hold under and by force of this settlement, and re-invest the proceeds of any such sales according to the terms and conditions of this trust.

And the said Gideon Howland, on his part, covenants and agrees with the several parties hereto and with each and every of the persons, party hereto, that he will, within one year from the day of the date hereof, pay to the said Thomas Mandell, his executors or administrators the said sum of Forty Thousand Dollars, as a part
91 of the sum which will be due and payable from him, as Executor as aforesaid, to the said Edward M. Robinson.

In Witness Whereof, the said several parties have hereunto, interchangably, set their hands and seals the day and year herein first written.

THOS. MANDELL [SEAL]
GIDEON HOWLAND [SEAL]
EDWARD M ROBINSON [SEAL]
ABBY S ROBINSON [SEAL]

Signed, Sealed and delivered in presence of
CHAS R TUCKER
SYLVIA ANN HOWLAND

Exhibit F. W. P., No. 4.

Be it remembered, That I Isaac Howland of New Bedford, in the County of Bristol and State of Massachusetts, considering the uncertainty of this mortal life, and being of sound and perfect mind and memory, blessed be Almighty God for the same, do make and publish this my last will and testament, in manner and form following.—

First, I give and bequeath unto my beloved wife Ruth Howland, Sixty Shares in the Stock of Bedford Commercial Bank now standing in my name, and five shares in the stock of Bedford commercial Insurance Company, and one half of my Household furniture. I also give and bequeath unto my wife Ruth Howland, the sole use and improve-

ment of the Dwelling-house in which I now live, together with the lot on which it stands, with the buildings and appurtenances thereunto belonging, as long as she remains my widow.—And after her decease, or marriage with another, I give and devise the aforesaid Dwelling house, lot, buildings & appurtenances thereto belonging unto my Grand daughter Sylvia Ann Howland, to hold, to her the said Sylvia Ann Howland, her heirs and assigns forever.—And lastly, I give, bequeath, and devise, unto my Grand daughters Sylvia Ann Howland and Abby S. Howland, to be eaqually divided between
92 them, All the rest, residue and remainder of my Real and Personal Estate, goods, and chattels of what kind and nature soever, to hold, to them the said Sylvia Ann and Abby S. their Heirs and assigns forever,

And I Hereby appoint my son in law Gideon Howland sole Executor of this my last will and testament, hereby revoking all former wills by me made. In witness whereof I have hereunto set my hand and seal this eleventh day of the third month in the year of our Lord one thousand eight hundred and twenty six

Signed, dated, published and declared by the above named Isaac Howland to be his last will and testament in the presence of us. who at his request and in his presence have hereunto subscribed our names as witnesses to the same
Signed ZACCHEUS CUSHMAN
Signed MARSHALL WALDRON
Signed THOMAS MANDELL

Signed
ISAAC HOWLAND [L. S.]

COPY

Exhibit F. W. P., No. 5.

Be it Remembered, That I, Gideon Howland of New Bedford, in the Commonwealth of Massachusetts, do, on this second day of January, in the Year of our Lord, one thousand, eight hundred and thirty six, make, publish and declare this, my last will and testament in manner and form following ; that is to say :

I give to my nephew, Gideon Howland, one thousand Dollars.

I give to each of my nephews, Edward W. Howland, William Howland and Gilbert Howland Junior, the sum of five hundred dollars.

I give to each of my nieces, Rhoda Howland, Lydia How-
93 land and Sylvia Almy, wife of Benjamin D. Almy, the sum of five hundred dollars.

I give to Gideon H. Smith of Dartmouth, the sum of five hundred dollars,

I give and devise to my Brother, Joseph Howland, the use and improvement, during the term of his natural life, of a certain farm, situate near the Round Hills in Dartmouth and commonly called the

Stephen Howland farm, and of the live stock and farming utensils, belonging to me on or about said farm.

All the remainder of my interest in said farm, together with such of said live stock and farming utensils as shall remain at the decease of the said Joseph Howland, I give and bequeath to the children of the said Joseph Howland, their heirs and assigns forever.

I give and bequeath to my daughter, Sylvia Ann Howland, my undivided half part of the wharves, lots of land with the stores and other buildings thereon standing, lying East of Water street in said New Bedford;—meaning to include herein all the real estate lying East of said Water Street and south of Union Street now held in common by me and the heirs of Isaac Howland, deceased;—To have and to hold the same, with all the privileges and appertenances thereto belonging, to her, the said sylvia ann Howland, her heirs and assigns forever.

I give and bequeath to my said daughter, Sylvia Ann Howland, her heirs and assigns, five undivided twelfth parts of two lots of land, one situate on the North side of School Street in said New Bedford and the other on the south side of said School street and both bounded westerly by Fifth Street—together with the buildings thereon standing and the privileges and appertenances thereto belonging—the same being now ocupied as an oil manufactory.

I give and devise to my daughter, Abby S. Robinson, one quarter of the Ship Balaxna and her appertenances, together with onequarter of the outfits and cargo on board said ship at the time of my decease.—

I give to Ruth Howland and my said daughter Sylvia Ann Howland, to be equally divided between them, all my household furniture, horses and other live stock, chaises, carts, wagons and farming tools and utensils of every description, excepting those on or about the farm in Dartmouth above mentioned.

And all the rest, residue and remainder of my estate, real, personal and mixed, of whatsoever description or wheresoever
94 situate, I give, devise and bequeath to my two daughters Sylvia Ann Howland and Abby S. Robinson, their heirs and assigns forever.

I appoint my friend Thomas Mandell, Executor of this my Will.

In Testimony of all which, I have hereunto set my name and affixed my seal the day and year above written.

"Signed" GIDEON HOWLAND [L S]

Signed sealed and published and declared by the said Gideon Howland to be his last will and testiment, in the presense of us, who, in his presense and at his request and in the presense of each other, hereunto set our names as witnesses: (the words "one quarter of" being interlined on the third page before signing)

Signed C H. WARREN
" JAMES WADY
" CHAS R. TUCKER

Exhibit F. W. P., No. 6.

Copy.

In the matter of the Indenture of Trust, between Edward M Robinson and Abby S Robinson his wife and Thomas Mandell.

Opinion.

Mrs Robinson having deceased, leaving a husband and daughter, the question submitted to me is to which of these the trust property belongs. The question is one of great difficulty; but after much reflection and a careful review of the authorities, the more satisfactory view to me is that the personal Estate goes to the husband, and the real Estate to the child.

The trust is for the joint lives of Mr & Mrs Robinson. It terminates of course with her life: upon its termination by her decease the property is to be conveyed to such persons as she shall direct, by an instrument in the Nature of a Will, or in the failure of such appointment to "her heirs at law." By "her heirs at law" is meant
95 (it seems to me) the persons who would take the property under the statutes of descent & distributions.

Under these the personal Estate would go to the husband, and the Real Estate to the daughter. The instrument in substance and effect says that upon the termination of the trust by the death of the wife the property shall go to whom she by Will directs, otherwise as if she had died intestate.

The result may be made certain by the decree of a court of Equity. Or as the daughter is of age, upon the release & discharge under seal by the daughter & father; the Trustee may convey with safety, as they shall desire and direct.

April 4th 1860. signed

BENJ F THOMAS.

Exhibit F. W. P., No. 7.

Be it remembered, That I, Hetty H Robinson of New Bedford in the County of Bristol and Commonwealth of Massachusetts, of lawful age, and of sound and disposing mind, and memory, do make, publish, and declare, this, my last will and testament in manner following: to wit:

First I give and bequeathe unto my Dear Father, Edward Mott Robinson, as a token of affection, the sum of Ten Thousand Dollars; if he shall be living at the time of my decease,

Second In case I shall have any issue, children, or grand children, living at the time of my decease, I give, bequeathe, and devise unto such issue one half of all my property and estate of every description, Real and Personal, after the payment of my debts, and the above named legacy; to them & their heirs forever. And in
96 case all said issue shall be in equal degree; that is: all children, or grand children, they shall take equally; otherwise, they shall take by right of representation

Third The other half of my said property and estate, I give, bequeathe and devise unto

of the said New Bedford, their heirs and assigns and successors in said Trust, as Trustees, for the following Trusts and purposes: to wit: That the said Trustees shall invest the said property in some safe stocks, mortgages, or other safe, & secure manner, according to their best judgment; and shall receive the interest and income of the same, and shall pay over the same, annually, to my children, equally, during their lives: And upon the decease of any child, his, or her share of said Trust fund shall be paid over to his, or her children, in equal shares: But, in case, such child shall leave no children, or issue, living, at his, or her decease, then said child's share shall go to my other children, and the children of my deceased child—

And in case either of the above named Trustees shall decline to accept said Trust, or shall decease or resign before the objects thereof are accomplished, the other Trustees shall fill said vacancy by the appointment of another person in his place, who shall have and possess all the rights and powers of a Trustee herein appointed. And this shall be done, from time to time, as vacancies occur, till the objects of said Trusts are accomplished.

Fourth Should I decease without leaving children, or issue, living at my decease, in that case, I give, bequeathe and devise all my property and estate, after the payment of my debts and the above named legacy, to my Aunt, Sylvia Ann Howland, to her and her heirs forever.

Fifth But, in case I shall survive my said Aunt Sylvia, and shall decease without leaving children, or issue living at my decease, then I give, bequeathe & devise all the rest, residue and remainder of my said property and estate of every description to

Trustees, their heirs and assigns, and Successors, upon and for the following Special Trusts and purposes; viz:

That, they; the said Trustees shall invest the said property
97 in some safe, secure, and permanent manner;—and shall keep the same well and securely invested; and shall receive, and apply the rents, income and interest of the said property to the establishment, support and maintenance of a School to be located in the city of New Bedford, for the instruction and education of the youth of said city of both sexes.

It is my wish that the school should be called "The School" and that said Trustees should procure, either by purchase or by building,—suitable Buildings and appurtenances for the accommodation of said School;—the expenses of which, are to be defrayed from said Trust fund or the income thereof.

The said trustees shall have the general care, management and oversight of said School. They shall appoint the Teachers, establish

rules and regulations for the government of said School,—determine the course of study to be pursued, and what persons may be admitted to the benefits of said School, and also, upon what terms & conditions—

It is my wish and desire that the benefits of the School may be bestowed chiefly upon those, who, by reason of poverty, or misfortune, may not possess the means of a suitable education; provided such poverty and misfortune are not the result of their own vices & crimes. But I leave this matter to the discretion and judgment of the Trustees; hoping the benefits of the School may be extended as widely as possible, among the virtuous poor of New Bedford. And if the said Trustees shall, at any time, deem it expedient to furnish to any of the youth of New Bedford more extended means of education than is afforded by instruction in said School; they are authorized so to do; and to make use of such part of the income of said fund for that purpose as they may think proper. My meaning is, that the Trustees be, and they are, authorized to defray, out of the income of said Trust fund, in whole, or in part, the expense of the support and education, at any school, College or University, of any of the youth of New Bedford whom, under the circumstances of the case, they may think proper to have so educated & supported.

And if, for the better management of said Trust fund school, and the better accomplishment of the purposes of this bequest, the said Trustees shall deem it expedient to procure an act of Incorporation, they are requested so to do. And as vacancies shall occur in said Board of Trustees, from death, resignation, or otherwise,
98 they shall be filled by the remaining Trustees by the choice of some other suitable person or persons (*residing in New Bedford*). And the person so chosen, shall have all the rights and powers of a Trustee appointed in this will—

And said Trustees shall have the right & power, from time to time, to change said investments;—and to sell and convey any of the said Trust property, whether Real or Personal, and to re-invest the proceeds in other property whenever, in their judgment, the interest of said Trust fund may require.

Lastly I do hereby nominate constitute and appoint
of New Bedford Executors of this my last will and testament

In witness whereof I have hereto set my hand and seal this Tenth day of April in the year of our Lord one thousand Eight hundred and sixty—

[SEAL.]

Signed sealed published and declared by the said Hetty H Robinson, as, and for her last will and testament, in presence of us, who at her request, and in her presence, have hereto set our names as witnesses.

99 *Exhibit F. W. P., No. 8.*

Be it remembered—that I, Sylvia Ann Howland of New Bedford in the County of Bristol and Commonwealth of Massachusetts, Single-woman do on this Fourth of March in the year of Our Lord One Thousand Eight hundred and fifty, make, publish, and declare this my last Will and Testament, in manner and form following :

First: I give and bequeath all my Household Furniture and wearing Apparel to my Sister Abby S. Robinson, if she shall be living at the time of my decease: and if the said Abby S. Robinson shall not survive me, I give the said Furniture and wearing apparel to my niece, Hetty H. Robinson, if she shall be living at that time : Otherwise I give the same to my Executors herein named to be disposed of in such manner as they shall judge proper :

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Secondly : All and singular the other Estate and property of which I may die seized or possessed, whether real personal or mixed, in whatever consisting, however described, and wheresoever situate,

[Page 2.]

I give, devise and bequeath to my Friends, Thomas Mandell, Charles R. Tucker and Henry Taber, their Heirs and Assigns, in Trust for the uses and purposes herein declared and specified: That is to say :

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That they shall manage, improve, sell, invest, and re-invest the same as herein more particularly directed, and pay over from time to time Two Thirds of the Net Income from all of said property arising, to my Sister Abby S. Robinson, if she shall be living at my decease for her sole use, free from the interference of her husband, taking her separate receipt therefor during her life: and after her death, or if she shall not survive me, that they shall in like manner pay over the said net income to my neice, Hetty H. Robinson, during her life: and of the said Hetty H. Robinson shall marry during the continuance of this Trust, it is my will that the said income so payable to her shall be paid to her free
100 from the interference of her husband for her own use and upon her own receipt

And after the decease of the said Abby S. Robinson and Hetty H. Robinson, or if the said Abby S. Robinson and Hetty H. Robi-

[Page 3.]

nson shall die before my decease, then I direct and order the said Trustees to distribute, dispose of, and apply Two Third parts of the property and estate devised as aforesaid, being Two Third parts of said Trust Fund in manner following:—And the same is devised to them upon the following further Trusts That is to say :

First It is my desire that one full Third part of the aforesaid Two Thirds, that is to say, two ninth parts of the principal of said Trust Fund shall be applied and devoted to the maintenance support, and

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education of destitute and deserving Widows, Single-women, and Orphan Children of the City of New Bedford: And in the earnest hope that such my will may be carried into effect by the aid of the Legislature of my native State of Massachusetts, I do hereby request my said Trustees to apply for a proper Act of Incorporation establishing an Institution for the purposes aforesaid in the City of New Bedford: And when such Corporation shall be duly organized, I do hereby

[Page 4.]

order and direct said Trustees to convey and transfer to such Corporation two full ninth parts of the principal of said Trust Fund to be held and forever applied to the purposes aforesaid. And I desire that it may be at all times remembered that all Orphan Children and Widows and Single-women belonging to said City of New Bedford, whose circumstances are such as to require, in the judgment of the Directors or Managers of said Institution, pecuniary assistance, shall be considered proper recipients of the aid designed to be rendered by this Institution.

As respects the mode of conducting the affairs of the Institution which it is my wish to establish, I direct my Trustees herein-before named to consult such persons as may in their judgment be best qualified to advise them, and to cause to be prepared such Rules and Regulations for its proper and efficient management as shall most certainly accomplish the object proposed. And I further au-
101 thorize said Trustees, if in their judgment it may be done consistently with the purposes aforesaid,

[Page 5.]

to effect such union of this Institution with the "Orphan's Home" now established in New Bedford, as shall be deemed judicious and for the best interests of all concerned.

Secondly: It is my wish that one full Third part of the said Two Thirds, that is to say two ninth parts of the principal of the said Trust Fund shall be so invested and improved, that the same shall be forever useful to the Seamen of New Bedford,—meaning thereby to include all Seamen residing at or sailing from this Port. I consider such an application of a portion of my Estate due to the Sailors of New Bedford; and I do earnestly hope that all persons who may have

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in charge the investment and use of the Fund now given for their benefit shall be so impressed with the importance of securing to them the blessings of a Christian Home, of religious instruction, of a friendly welcome and Godspeed as they come and go, that such fund shall be made permanently conducive to their best welfare:

And if when the time shall come for the application of this part of the said Trust Fund there

[Page 6.]

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102 [Page 7.]

parts of said Trust Fund be, by my said Trustees conveyed and transferred to the same:

Thirdly: Under the provisions of Law, a System of Common Schools has been established for the Education of Youth, by means whereof young persons of both sexes may be instructed, and in the City of New Bedford I have reason to believe that a proper appreciation of the importance of efficient schools is had;—but it has seemed to me that the want has been more and more felt of an Institution which shall be as free to all as the Common Schools now are, for the Education of the Youth of both Sexes after they shall have completed the Course of Study usually taught in public schools and in the New

Margin torn off.] Bedford High School as now conducted or a Course of Study equally advanced. And it is my intention to cause such an Institution to be established. But it is not my wish that such Institution shall at all interfere with or be substituted for our present public schools. For the establishment and support of such an Institution I do now appropriate and apply the remaining One Third part

[Page 8.]

Margin torn off.] of the said Two Thirds, that is to say Two Ninth parts of the principal of said Trust Fund;—and I direct and order my said Trustees as soon as may be done after the time shall arrive for this Trust to take effect to cause to be incorporated under the Laws of the Commonwealth and in the manner herein designated, an Institution or School for the more Complete Education of the Youth of New Bedford of both sexes The Building or Buildings suitable therefor to be erected in the City of New Bedford, where, in the judgment of the Trustees of said Institution it shall be deemed most advisable. And I desire that such Institution shall be placed

under the charge of a Board of Trustees of suitable character and Education, consisting of not less than Eleven persons, Inhabitants of New Bedford or of the Towns adjoining this City;—and that the first Board be chosen by the Mayor of the City of New Bedford, the President of the Common Council of said City, the Chairman of the School Committee of said City and the Judge of Probate for the County of Bristol, then in office: that such Board so chosen shall be the persons in whose

103 [Page 9.]

names the Act of Incorporation shall be obtained: that when vacancies shall occur by reason of death, removal from the Commonwealth or otherwise they shall be filled in the manner following: The remaining Trustees or the Major part of them shall present in writing to the Judge of Probate of the County of Bristol then in office, the names of Four suitable and discreet persons, Inhabitants of New Bedford or of the Adjoining Towns; one of whom shall be by the said Judge appointed to fill such vacancy. And in case said Trustees shall not agree upon the names of persons to be so presented, or shall unreasonably neglect to present them, the said Judge of Probate shall have power himself to select and appoint such person.

Respecting the Scholars to be deemed admissible to such Institution as I desire to establish I direct that all young persons whose residence would entitle them to admission to the Common Schools of New Bedford shall be received,—provided their Parents or Guardians apply in their behalf,—and provided that it shall appear upon suitable examination that such Scholar has made such Progress as is usually made by those who have attended to and pursued a Course of Study similar to that now adopted

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[Page 10.]

in the New Bedford High School; but it shall not be deemed necessary that any Scholar shall have actually attended any Public School. Respecting the Course of Study to be adopted and the term of time to be devoted thereto, it is my will that the Trustees of such Institution have discretionary power to establish the same;—provided only that when the same shall be established no change shall be made therein without the written approval of Eight in number of said Trustees.

And whereas in the judgment of the Trustees of said Institution, the interests of Education may be promoted by furnishing suitable support to such Scholars as are without sufficient means of support during their Course of Study or their connexion with the Institution, it is therefore my wish that in such Act of Incorporation as shall be procured, or in the Plan or system which shall be adopted such suitable provision shall be embodied as will secure to the Trustees of said Institution full power to erect, provide and arrange such

104 sufficient and convenient Buildings for this purpose, or in such other way to supply such needful and merited assistance and support

[Page 11.]

as to them shall seem best, subject to such Rules and Regulations as shall be found expedient.

And it is also my wish that such other provisions shall be therein embodied as will, if the means therefor be sufficient, authorize such instruction in Mechanical, Mercantile or Professional pursuits as will qualify those scholars who receive the same, to become useful and practical men and women. But it is to be understood that my first wish is to educate the Mind and Heart of Youth; and if after fair and full provision is made therefor, the means at the disposal of the Managers of said Institution shall be sufficient then such other expenditures may be authorized as are required for the purposes last named.

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And I do further direct after the said Board of Trustees of said Institution shall be elected as aforesaid that they shall without delay prepare such Act of Incorporation and such system or plan of government and of Administration as will in their judgment best effect my wishes as herein

[Page 12.]

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expressed:

And it is my desire that such sufficient compensation shall be paid to the President Officers, Instructors and others employed as will secure for the conduct of the affairs of the Institution such talent, learning ability and experience as shall ensure its permanent usefulness and respectability.

And when said Act of Incorporation shall be obtained I do order and direct the Trustees herein above named, or their Successors in said capacity to convey and transfer to the said Corporation the remaining Two ninth parts of all the principal of said Trust Fund for the purposes aforesaid. And in order that the said Trustees may be enabled without embarrassment or hindrance, to carry into effect the intentions of this will as above expressed, I do now desire them, whenever the time shall come for such division and appropriation of the said Two Third parts of My Estate as are above provided for, to cause to be taken an exact Inventory of all my property of every kind at such valuations as shall in their judgment be true and

105 [Page 13.]

right; and when they have so done, that they shall select, set apart, convey and transfer to each of the Corporations aforesaid such a portion and so much of my said property as shall be fully equal to Two Ninth parts thereof.

Thirdly And inasmuch as I have herein-before provided for the disposition of Two Thirds of the Income during the lives of the said Abby S. Robinson and Hetty H. Robinson, and after their decease of Two Thirds of the Principal of my Estate and property, I do now in respect to the remaining One Third thereof direct as follows, intending and declaring the residuary devise aforesaid to said Trustees to be upon these further Trusts,—that is to say:

That they shall pay over from time to time the remaining One Third of the Net Income from all the said Estate arising to my Neice, the said Hetty H. Robinson, daughter of my Sister Abby, if she shall be living at the time of my decease, during the life of the said Hetty; And if she shall be married, I direct said Trustees to pay over the same to her, her coverture notwithstanding, free from the interference or control of her husband, taking her separate receipt therefor. And

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[Page 14.]

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after the decease of the said Hetty H. Robinson, leaving no children, or if she shall die leaving no children, before my decease, I direct and order the said Trustees to pay over the said Third part of the said Income from time to time to my sister Abby S. Robinson, if she shall be living, during her life, taking therefor her separate receipt, her coverture notwithstanding.

Fourth If the said Hetty H. Robinson shall die either before or after my decease, leaving a child or children living, then I direct and order that my said Trustees from time to time pay over to said child or children, or to their Guardian legally appointed, the whole of said One-Third of the Income as aforesaid until the Youngest of the living children of said Hetty shall be of the age of Twenty-One years; and I then direct and order that the said Trustees convey and transfer to such child or children for their own use, the said remaining three ninth parts of the Principal of said Trust Fund, freed and discharged of all Trusts whatever:

106 And if any child of the said Hetty H. Robinson shall die before the Age of Twenty-One Years, or afterwards before such conveyance

[Page 15.]

of the Principal of said Trust property leaving a lawful child or children, it is my will and intention that such child or children shall take the share of their deceased Parent. And if the youngest child then living of said Hetty H. Robinson shall be Twenty-one Years of age such conveyance shall be forthwith made discharged of all Trusts; otherwise the said one Third of the Principal of said Trust property shall be so conveyed when such youngest living Child of said Hetty H. Robinson shall be twenty-one years of age, or at the same time (if this time shall first arrive) that it would have been conveyed according to the provisions of this Will, if such child of the said Hetty had not died. But if at such time last named all the children of such deceased child of said Hetty H. Robinson shall have also deceased, and there are no children or grand children of said Hetty H. Robinson to receive their share from the said Trustees, then the same shall be disposed f among the several Institutions of Charity bove named as herein-after more specially provided. And in case of the death of any child of the said Hetty without lawful children before the youngest

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[Page 16.]

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living child of said Hetty shall be of the age of Twenty One Years, the share of such child shall go to the other children of the said Hetty. But if the Youngest living child of said Hetty H. Robinson shall not be at any time twenty one years of age, or if no lawful child of the said Hetty shall die leaving lawful children who under the provisions of this will would be entitled to receive a conveyance of said Trust property so that by the true meaning of this Will the time cannot arrive when the remaining three ninths or one Third part of said Trust property may be conveyed and transferred to such children of the said Hetty H. Robinson or to their children:

Fifth Then I do dispose of the said remaing one Third part of the whole of said Trust Fund as follows;—declaring that the said residuary devise is made upon these further Trusts:—That is to say—That the said Trustees shall in such way as shall seem to them best for the interest of all concerned, sell and dispose of all and singular
107 the Three Ninths or One Third part of said whole estate, reducing the same and all of it to money; and that they shall

[Page 17.]

distribute, pay and divide to and among the Three several Institutions heretofore designated and for the promotion of the purposes hereinbefore indicated and which it is hoped may be effected through their establishment and endowment, in equal third parts the whole of the net proceeds arising from the sale of the said remaining One Third part of the said Trust Fund and property, such payments to be made in full discharge of the Trusts aforesaid so far as the same concern the said One Third part of said property.

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And I charge the said Institutions, the Officers and Managers thereof that they receive from said Trustees, apply and use the said additional fund so provided for them in such way and manner as may best promote the several objects and purposes of said Institutions, and thereby to aid in the accomplishment of the good which it is my earnest desire to effect.

Sixth In Order that the Trustees appointed under this will and

[Page 18.]

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their successors in office may be reasonably compensated for the labor, oversight and responsibility imposed on them by the provisions of this will and the duties therewith connected, I do hereby authorize and direct them to retain and receive to their own use so long as the Trusts herein created shall continue, the sum of One Thousand Dollars yearly to each of them, unless five per cent per annum on the net amount of the income of all the Estate shall amount to more than the sum of Three Thousand Dollars, in which case such compensation shall be Five per cent per annum upon the net amount of the Income aforesaid to be equally divided among said Trustees.

Seventh And furthermore, as a token of the confidence which many years acquaintance with them has given me in the integrity and faithfulness of my friends the Trustees afore named I do now direct that of the said Original Trustees no Bonds be required

[Page 19.]

of them for the discharge of their duty under this Will: But in case other Trustees shall be appointed by the Judge of Probate, such Bonds are to be required.

108 And I do hereby authorize and fully empower the said Trustees and their successors in office to do all acts and things, exercising therein their own best judgment, which shall be needful to carry into full effect the provisions and the intention of this Will: And it is my wish that in managing, selling, conveying, investing, dividing and finally disposing of my Estate they shall have full and complete power in all respects, so that all their acts legally done shall be valid and effectual.

Margin torn off. *Eighth* I do enjoin it upon the said Trustees and upon all who shall have the care and conduct of the Three Institutions hereinabove named and provided for, that no Sectarian prejudices shall be encouraged by them; but that in the selection of persons to administer their affairs, regard shall be had to their capacity, ability and integrity, and not to their religious creed or theological doctrine.

Ninth It is my wish that in the disposition

[Page 20.]

Margin torn off. and use of the money to be applied to the foundation and conduct of the several Institutions above named, no needless, expenditures for Buildings, nor unreasonable allowances for services rendered should be made: But I desire that all arrangements, whether for Buildings suitable for the uses contemplated, or for Officers or Agents to promote the purposes of their erection, shall include such sufficient, but reasonable sums as will fully and judiciously effect the ends to be attained. And I do further recommend to all who shall have the establishment and conduct of the said Institutions, that so far as the same may be properly done, the funds appropriated respectively to such Institutions shall be preserved whole and the Income thereof used and expended for the purposes herein-before declared.

Tenth If it shall be found not practicable by the Trustees who shall be in Office at the time said Institutions are to be established to procure such Acts of Incorporation as will in their judgment carry into effect the purposes of this Will, so that the portions of my Estate given to

[Page 21.]

each may be safely conveyed to them for the uses above stated, I do hereby fully authorize and empower the said Trustees to cause

such Institutions to be otherwise established and named in such way as shall be consistent with law, and to convey to suitable and proper Trustees the funds and property applicable to each institution, in such manner and upon such terms as shall best effect the intention herein before expressed. But this discretion and authority are only to be used when it shall plainly appear that suitable Acts of Incorporation cannot be had, and in order to prevent the defeat of my declared Will: But I believe that in no way can such Institutions be so well founded or so judiciously managed as by the creation of distinct Incorporated Institutions.

Eleventh: And I earnestly hope, inasmuch as my wish is to do good to those who shall live after me, that all reasonable aid will be rendered by the constituted Legislators of the Commonwealth that such suitable and fit Charters may be granted, as will safely answer the ends proposed: And it is my wish

[Page 22.]

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and hope that at all times such Institutions as shall be established under this Will may be so under the jurisdiction and protection of the Laws, that a just and proper administration of the affairs of each shall be secured for the benefit of all whose welfare I seek to promote thereby.

Twelfth. It is possible, when the time shall arrive for the division of my Estate, and the transfer of Two-third parts thereof to the Three Institutions above provided for, that the share or portion to be set apart, conveyed and transferred for the use and benefit of Seamen residing at or sailing from New Bedford shall be so large that the Income of it shall seem to be more than sufficient to accomplish the purposes herein above named: But I do now further Declare, That it is my wish in the foundation of this Institution to provide so far as I may for all the wants of the Sailor: And I would secure to him a Home, and Food and Clothing and the the blessings of Health and of Religious Instruction: And I trust and expect, that from time to time and as circumstances shall authorize the expenditure such Buildings

[Page 23.]

for the Home, Hospital or Bethel shall be provided as will secure all the comforts of Social Life to the New Bedford Seamen.

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[Page 24.]

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vely the as soon conveniently done after my decease, in the some way as if said bequest had been contained in said Will before the residuary devise therein named to the said Thomas Mandell Charles R. Tucker and Henry Taber in Trust.

[Page 25.]

In witness whereof I have hereto set my Hand and Seal this Eleventh day of April i the year One Thousand Eight Hun Fifty-four.

Signed, sealed published and declared by sa Sylvia Ann Howland as and for a Codicil to her last Will and Testament in presence of us who at her request in her presence, and in presence of each other have hereto set our names as witnesses and have also attested the foregoing sheet as a part of this Codicil

111 *Exhibit F. W. P., No.* 9.

NEW BEDFORD 8M° 4, 1864

Edwd. Mott Robinson Esq

Dr. Sir

In reply to your confidential note of the 1st, I would say, that some three years ago while S. A. H. was staying at the round Hills, I found it necessary to go down to get her signature to some instrument, (not then having a power of attorney for such purposes, which she has since given me.) She said to me "I wish you to call on "Chs. R. Tucker and get my will which he has in his possession and "when convenient bring it to me," I very soon called on C. R. T. & got the package said to contain her will and carried it down to her at the farm and gave it to her, She took it without a word passing between us on the subject, she had never named a word to me on the subject but I had learned from C. R. T. that such an instrmt had been prepared & he gave me some of the pariculars, which I think I named to you at the time.—since the delivery of that package she has never in any way or word alluded to the subject of a will, or spoken of that or any other will.—I think I heard some one say some year or two ago that she thought of having a will prepared but I took no note of it as it was a subject I had never been consulted upon, nor had any wish to be consulted on, I have no knowledge of any other will having been prepared or that the first one spoken of above has been distroyed—and had I been asked to assist in any way with regard to it, situated as I have been and still am, I should have declined to advise on the subject—

Yours very truly
T MANDELL

P. S.

I will venture an opinion, altho, without any knowledge except judging from the nature of things,

That Hetty has no cause to fear but that her aunt will leave to her all the property she will ever need—

Yours T. M.

112 *Exhibit F. W. P., No.* 10.

Be it remembered that I, Sylvia Ann Howland, of New Bedford, in County of Bristol, do hereby make, publish and declare this the second page of this will and testament made on the eleventh of Jan.

uary in manner following, to wit: hereby revoking all wills made by me before or after this one—I give this will to my niece to shew if there appears a will made without notifying her, and without returning her will to her through Thomas Mandell as I have promised to do. I implore the Judge to decide in favor of this will, as nothing would induce me to make a will unfavorable to my niece, but being ill and afraid if any of my care-takers insisted on my making a will to refuse, as they might leave or be angry, and knowing my niece had this will to show—my niece fearing also after she went away—I hearing but one side, might feel hurt at what they might say of her, as they tried to make trouble by not telling the truth to me, when she was here even herself. I give this will to my niece to shew if absolutely necessary, to have it, to appear against another will found after my death. I wish her to shew this will, made when am in good health for me, and my old torn will made on the fourth of March, in the year of our Lord one thousand eight hundred and fifty, to show also as proof that it has been my lifetime wish for her to have my property. I therefore give my property to my niece as freely as my father gave it to me. I have promised him once, and my sister a number of times, to give it to her, all excepting about one hundred thousand dollars in presents to my friends and relations.

In witness whereof I have set hereto my hand and seal this eleventh of January, in the year of our Lord one thousand eight hundred and sixty-two.

Signed, SYLVIA ANN HOWLAND, & A SEAL.

113 *Exhibit F. W. P., No.* 11.

[First page.]

Be it remembered that I Sylvia Ann Howland of New Bedford in the County of Bristol, and Commonwealth of Massachusetts, of lawful age and of sound and disposing mind and Memory, do make publish and declare this my last will and testament in Manner following to wit hereby revoking all wills made by me before or after this one—

I give and bequeath unto my niece Hetty Howland Robinson all my Real and Personal estate goods and chattels of every description including the Round Hill Farm and every thing thereon House on the corner of Water and School and First and every thing on and belonging land buildings to her the said Hetty H. Robinson and her children after and assigns forever

[Second page.]

I give this will to my neice to show if there appears a will made without notifiing her and without returning her will to her through Thomas Mandell, as I have promised to do I implore the Judge to decide in favor of this will, as nothing would induce me to make a will unfavorable to my neice but being ill and afraid, if any of my care takers insisted on my making a will to refuse as they might leave or be angry and knowing my neice had this will to show my neice

fearing also after she went away I hearing but one side might feel hurt at what they might say of her as they tried to make trouble by not telling the truth to me when she was here even herself—I give this will to my neice to show if absolutely nesssury, to have it to appear against another will found after my death. I wish her to show this will made when I am in good health for me, and my old torn will made on the Fourth of March in the year of Our Lord One Thousand and Eight hundred and fifty, to show also as proof that it has been my life time wish for her to have my property—I therefore give my property to my neice as freely as My Father gave it to Me. I have promised him once and my sister a number of times of times
114 to give it to her all excepting about one hundred thousand dollars in presents to my friends and relatives—

[Third page.]

If the said Hetty H. Robinson dies without children or grand children before me I wish it to go to the Charity Schools and institutions named in will of 1850 third month fourth day—with these trustees Thomas Mandell Cornelius Howland, Henry Taber—

I appoint Thomas Mandell of New Bedford Executor of this my last will and testament—

In witness whereof I have hereto set my hand and seal this day of in the year of our Lord one thousand eight hundred and sixty two—

Signed sealed published and declared by the said Sylvia Ann Howland as and for her last will and testament in presence of us who at her request and in her presence have hereto set our names as witnesses—

115 *Exhibit F. W. P., No.* 12.

Ruth Howland 2.000 a year as long as she lives
Mr Mandell 20.000
Lat Thornton 10.000 and any being left to Mrs Thornton & Mrs Gerrish

Mrs Congdon	10.000
Mrs Price	10.000
S. Russell	——
Montague	5 000
Brownell	5.000
Nancy Sissen	1.000
Grey	3.000
Fred Brownell his house	
Irish	5.000

and you can give to those who have been kind if you think best and any of those who do either of us an unkindness, after this you

need not give but return it to the estate or give some of it to new ones or more to those already mentioned.

500. or 1000

On the back of exhibit.

Dr. Gordon 5000 on old list [*this line erased*]
S. M. H. 2000 on old list [*this line erased*]
Not one cent to any one that does not assist you if there is any trouble

116 *Exhibit F. W. P., No.* 13.

[Large lemon-colored envelope.]

HETTY H. ROBINSON

Exhibit F. W. P., No. 14.

[Small white envelope.]

COPY—

HETTY H. ROBINSON FOR S. A. H.

117 *Exhibit F. W. P., No.* 15.

Be it remembered that I, Sylvia Ann Howland, of New Bedford, in County of Bristol, do hereby make, publish and declare this the second page of this will and testament made on the eleventh of January in manner following, to wit: hereby revoking all wills made by me before or after this one—I give this will to my niece to shew if there appears a will made without notifying her, and without returning her will to her through Thomas Mandell as I have promised to do. I implore the Judge to decide in favor of this will, as nothing would induce me to make a will unfavorable to my neice, but being ill and afraid if any of my care takers insisted on my making a will to refuse, as they might leave or be angry, and knowing my niece had this will to show—my niece fearing also after she went away—I hearing but one side, might feel hurt at what they might say of her, as they tried to make trouble by not telling the truth to me, when she was here even herself. I give this will to my niece to shew if absolutely necessary, to have it, to appear against another will found after my death. I wish her to shew this will, made when I am in good health for me, and my old torn will made on the fourth of March, in the year of our Lord one thousand eight hundred and fifty, to show also as proof that it has been my life-time wish for her to have my property. I therefore give my property to my niece as freely as my father gave it to me. I have promised him once, and my sister a number of times, to give it to her, all excepting about one hundred thousand dollars in presents to my friends and relations.

In witness whereof I have set hereto my hand and seal this eleventh of January, in the year of our Lord one thousand eight hundred and sixty-two.

SYLVIA ANN HOWLAND, & A SEAL.

118 *Exhibit F. W. P.*, 16.

[*on one side*]

equeathe unto my niece—
Robinson, All my Real and
h, goods and chattels of every
ncluding the Round Hill
erything there on House on the cor
hool and First and every thing
ing land and buildings to her
Howland Robinson and her children
s forever.
id Hetty Howland Robinson (dies
en or grandchildren before me
to the Charity schools and

[*other side of F. W. P.*, 16.]

SYLVIA ANN

Signed sealed published
declared by the said Sylvia An
as and for her last will an
in presence of us who at h
in her presence have hereto se
as witnesses.

PELEG HOWLAND [SEAL.]
KIZIA R. PRICE [SEAL.]
ELECTA MONTAGUE [SEAL.]

119 *Exhibit F. W. P., No.* 17.

(R. C. P. "F")

Know all men by these presents that We Edward Mott Robinson and Hetty H Robinson both of New Bedford in the county of Bristol in consideration of one dollar to us paid by Thomas Mandell of said New Bedford, Trustee under an Indenture of Trust bearing date the twenty second of February in the year eighteen hundred and thirty four, between the said Edward M Robinson and Abby S Robinson his wife and said Mandell and Gideon Howland, and of certain assignments and transfers and conveyances made by said Mandell as Trustee, under such indenture of even date herewith have released and discharged and do by these presents release absolve and discharge the said Mandell from from all and singular the claims which he or either of us might otherwise have against him as such trustee or against the property real or personal in his hands as such, so that neither we or either of us or our heirs or legal representatives or the heirs or representatives of either shall ever make any claim or demand upon the said Mandell or his heirs or other legal representatives with respect to said trust estate or the said Mandells execution of the trust and that if any claim demand or complaint be made in law or equity this instrument may be pleaded as a full & perfect bar to the same

In witness of which we have hereunto set our hands and seals this fourteenth of April——in the year eighteen hundred and sixty.

Witness to Signature of
EDW MOTT ROBINSON
WM E. WATSON

EDWD MOTT ROBINSON [SEAL.]
HETTY H ROBINSON [SEAL.]

Witness to Hetty. H. Robinson
ABNER. H. DAVIS

120

121 Circuit court of the United States, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant,
vs.
THOMAS MANDELL, *et al.*, complainants.

Deposition of Edward H. Green.

Edward H. Green, of the city, county, and State of New York, aged forty-six years, being duly sworn, deposes and says as follows:

I was born in Vermont. I am a partner of the mercantile house of Russell and Sturgis, of Manilla. I have been a partner for sixteen years in that house. I am engaged to be married to the complainant, and was so before the death of her aunt, Sylvia Ann Howland; I should think a month before.

Int. 1. Will you look at yellow envelope, now shown you, marked F. W. P., 13, and the will of Miss Robinson, marked F. W. P., No. 2, and say when and where, and under what circumstances, you first saw them, if you ever saw the same before?

(Objected to, form and substance.)

Ans. The first time I saw it—(Plaintiff's counsel asks, Saw what? Defendants' counsel objects to the interruption of the witness, while he is answering)—the first time I saw the envelope—I am answering the question in the way it was asked—was in a chamber at Miss Howland's house. (Plaintiff's counsel says, State about what time. Defendants' counsel asks a ruling of the magistrate upon his objection that plaintiff's counsel ought not to interrupt the answer of witness after the question is recorded and put. The magistrate rules that the question must first be answered as put.) It was handed to me by Miss Robinson, who received it from Mrs. Brownell, who
122 took it out of a trunk that was in a closet in the room. I opened it, that is, the envelope, and there I first saw the will of Miss Robinson. That was a day or two after Miss Howland was buried, in the morning, between ten and eleven o'clock. I was calling at Miss Howland's house in the morning, and was requested to go up stairs by Miss Robinson, as she was looking for her will. (Defendants' counsel object to the foregoing form, "and was requested," as incompetent.) When I went into the room Mrs. Brownell was in the closet, hunting over the contents of a trunk. She handed out a number of pieces of paper to Miss Robinson, one after the other; at last she handed the yellow envelope, saying: I think this is the will you wanted. Miss Robinson took it and handed it to me. I opened it and read her will, which is this paper, F. W. P., No. 2.

Int. 2. Was the envelope sealed when handed to you, and who opened it?

Ans. It was stuck together. I opened it.

Int. 3. What do you mean by "stuck together?"

Ans. I mean that there was no sealing wax on it. It was stuck in the usual way of envelopes.

Int. 4. Who was present at this time.

Ans. No one but Miss Robinson and Mrs. Brownell.

Int. 5. Whether or not had you been made aware before you went to the house, and how, that any search had been or would be made for the will? And was or not any request made to you on the subject; and, if so, by whom?

(Objected to, form and substance.)

Ans. I was aware the night previous that a search had been made, and that the will had not been found. (Answer objected to as hearsay and otherwise incompetent.) I was told the evening previous by Miss Robinson that she had been hunting for her will, and that it was so dark they gave up looking for it that night, and that they intended to look for it the next morning; that is, Mrs. Brownell and Miss Robinson. The request was made to me to come the next morning; there was no more than that.

(Answer objected to by defendants, as containing declarations of plaintiff not under oath, and otherwise incompetent.)

Int. 6. When did you first see the white envelope, marked F. W. P., 14, and the papers marked respectively F. W. P., 15 and 16? And where did you see the same? Whether before or after
123 the funeral of Miss Sylvia Ann Howland, and whether or not were all the papers separate or enclosed when you first saw them.

(Objected to, form and substance.)

Ans. It was the evening of the day of the funeral, or the next day—the next evening, in the parlor of Miss Howland's house—I mean the funeral of Miss Howland. They were all in an envelope, in the white envelope, No. 14.

Int. 7. Who showed you those papers? Was or not any reason, and what, given for showing them to you, and by whom? Was or not anything, and if so what, said about counsel, and were you or not requested to do anything, and, if so, what, in relation to those papers?

(Objected to, form and substance.)

Ans. Miss Robinson shew me those papers. She said it would convince me that the will I had heard read was not her aunt's will. I was requested to see counsel to see what could be done about breaking Miss Howland's will, on the ground of undue influence, and on the supposition that she was drugged at the time it was made.

(Answer objected to by defendants, as containing declarations of plaintiff not under oath, and otherwise incompetent.)

Int. 8. What do you mean by the will you had heard read? What will had you heard read, and where, and at what time?

(Objected to, form and substance.)

Ans. The will of Miss Howland made by Eliot and Gordon. I heard it read after her funeral, at her house; I should think it was three o'clock in the afternoon on the day of the funeral.

Int. 9. When did you first see the will of Miss Howland, the paper now handed you, marked F. W. P., No. 1, and the paper now handed you, marked F. W. P., No. 10? And were the same or not ever afterwards delivered to any person for any purpose, and if so, what?

(Question objected to, form and substance. Upon the objection and the further objection to altering the question after objection noted, the question is withdrawn and the following put:)

Int. 10. When were you first aware of the existence of, and also when did you first see, the will of Miss Howland, the paper now handed you, marked F. W. P., No. 1, and the paper now handed you, marked F. W. P., No. 10? And were the same or not ever afterwards, to your knowledge, delivered to any person for any
124 purpose, and, if so, what?

(Objected to, as assuming facts not proved, leading in form, and incompetent in substance.)

Ans. The first I heard of it was when I saw the copy of it. It was taken out of the white envelope. I think it must have been a week or ten days after that, in New York, that I saw No. 1 and No. 10. I mean to say, the first I heard of them was when I saw the copy of them. They were taken out of the white envelope, the copies were. They were delivered to me by Miss Robinson, for the purpose of showing them to counsel.

Int. 11. Whether or not, when you first saw the papers Nos. 1 and 10, were they separate or attached to each other? And whether or not did you ever see them when they were attached to each other, and, if so, when and how?

(Objected to, form and substance.)

Ans. When I first saw papers Nos. 1 and 10 they were separate. They were attached to each other when they were given to me, for the purpose of showing them to counsel, with a fine thread.

Int. 12. Whether or not, to your knowledge, were those papers placed before counsel, and by whom, and about what date?

(Objected to, as calling for incompetent testimony.)

Ans. I placed them before counsel, I should state, between the 20th and 24th of July anno Domini 1865.

Int. 13. Have you or not read the bill in this case, and the statement of the alleged agreement therein set forth between the plaintiff and her aunt, as to the making and delivering of mutual wills?

(Objected to, form and substance.)

Ans. I have.

Int. 14. Will you state, if you know, at what time, if at all, and how, and under what circumstances, Miss Robinson was aware of, or was informed, and, if the latter, by whom, that the agreement between herself and her aunt as to their wills set forth in her bill could be enforced by law?

(Objected to, form and substance, as assuming facts not proved, and as calling for evidence of facts not within the knowledge of the witness.)

Ans. It must have been sometime between the 20th and 24th of July, after I had shown the papers to counsel. She was informed by me, in New Bedford.

125 Int. 15. Prior to that time, in giving you instructions to lay the papers before counsel, or at any other time, had she made

any suggestion in your presence, that such an agreement might be enforced by law? If so, state the facts.

(Objected to as leading in form, as calling for the inferences of the witness, and for incompetent testimony.)

Ans. No; she had made no such suggestion.

Int. 16. Prior to the time of your so consulting counsel, and of your statement to Miss Robinson as to the power to enforce by law the agreement between her and her aunt, had she or not, to your knowledge, made any investigations or inquiries as to the will of her aunt, executed in 1863, and the codicil thereto; and did any one, and who, aid her in making those investigations or inquiries, and what were they?

(Objected to as preceding question.)

Ans. She had. (Witness asks, Legal aid? Plaintiff's counsel says, No. Defendants' counsel objects to all this, and plaintiff's counsel directs that it be recorded.) Nobody was interested in aiding her in making those investigations, as all the people about her were legatees under the Eliot will. No one aided her in those investigations. She wished to find out how the will was made, the quantity of opium given to Miss Howland at the time, and all the facts connected with it.

Int. 17. State all the subjects of inquiry or investigation by her, as near as you can remember.

(Objected to as before.)

Ans. She wished to know under what circumstances her aunt's will was made. She sent to Eliot, to know if he made it, and she could get no information out of him. His answer was, he couldn't reveal professional secrets. She wished to know if undue influence had been used with her aunt in making her will.

Int. 18. Anything further?

Ans. Nothing further.

Int. 19. Were you present when these investigations and inquiries were made?

(Objected to, form and substance.)

Ans. Some of them.

Int. 20. Will you look at the paper already shown you, marked F. W. P., No. 16, and state if you know anything about the destruction of the part of it which is gone. State, if you know, the occur-
126 rence, and who was present.

(Objected to, form and substance, and as assuming facts not proven.)

Ans. I was present when it was burnt by accident. It happened in Miss Robinson's parlor, where she was living. It was on a table with a quantity of other papers, and they were thrown into the grate. I remarked to Miss Robinson, that she should be careful not to burn anything of consequence. This paper was then saved from the fire.

Int. 21. Will you look at the paper now shown you, marked F. W. P., 11, and state when, and under what circumstances, you first saw the same?

(Objected to, substance.)

Ans. It was up in the attic of Miss Howland's house. Miss Robinson and I were in New York. She requested me to go on to New Bedford, for the purpose of getting some trunks of hers—clothes. She told me in one piece of cloth I should find a copy of her aunt's will. She wished me to be very careful, and get it. I found it in the place she designated, rolled up in a piece of cloth, in this attic room. I should say it was in the month of August some time, 1865. It may have been later. Thomas Mandell went with me, when we went to get the things out of the room. He was not present when this was found. Nobody was living in the house at the time. Mandell had the key of the house. He helped me pack the things in the trunks.

(Answer objected to by defendants as incompetent and irresponsive.)

Int. 22. Whether or not, after you had consulted counsel, as you have stated, and laid the papers before them, and stated the result, as you have said, to Miss Robinson, did she, to your knowledge, make any further inquiries as to the circumstances under which her aunt's will had been made and executed, or did those inquiries cease?

(Objected to, form and substance.)

Ans. I recollect no such inquiry.

Cross-examination:

Cross-int. 1. How long have you been acquainted with the complainant, Miss Robinson?

Ans. About two years.

Cross-int. 2. Where did you first see her?

Ans. At her father's house, in New York.

127 Cross-int. 3. If before the death of her father, how long before his death?

Ans. This was in February, and he died in June.

Cross-int. 4. When did the engagement take place?

Ans. I should think about the first of June.

Cross-int. 5. Was her father then confined to his house by sickness?

Ans. I think he went out. He was unwell at the time. He died on the fourteenth of June.

Cross-int. 6. What property—what amount of property did Mr. Robinson leave?

(Objected to as immaterial, and matter to be shown by probate records, if admissible.)

Ans. I am not aware of the amount.

Cross-int. 7. To your best knowledge and belief?

(Objected to as before.)

Ans. I should think between three and four millions of dollars.

Cross-int. 8. Do you know whether the inventory shows a much larger sum?

(Objected to as before, and as asking for the contents of a written instrument.)

Ans. No; I do not.

Cross-int. 9. What portion of it is given to Miss Robinson?

(Objected to as immaterial, and as calling for the contents of a written instrument.)

Ans. Nine hundred and ten thousand dollars in money and stocks, and an estate in California.

Cross-int. 10. How much of it in trust for her?

(Objected to as before.)

Ans. The balance of the estate, with the exception of small legacies.

Cross-int. 11. Were you present when the nine hundred and ten thousand dollars was paid over to her by the executors?

(Objected to as immaterial.)

Ans. I was.

Cross-int. 12. How soon after the death of Miss Howland were you at New Bedford?

Ans. Two days, I think.

Cross-int. 13. What day of the week and month did she die, and what day were you there?

128 Ans. She died on Sunday, the second of July. I was there on Tuesday, the fourth.

Cross-int. 14. What day was Miss Howland buried?

Ans. Wednesday, the fifth of July.

Cross-int. 15. What time of the day on Tuesday did you get to New Bedford?

Ans. I got there in the morning.

Cross-int. 16. Did Miss Robinson go with you to New Bedford?

Ans. No.

Cross-int. 17. Was she at Miss Howland's when you arrived at New Bedford?

Ans. She was.

Cross-int. 18. On the day of your arrival at New Bedford, did you see any papers of Miss Howland's, or from Miss Howland's trunk?

Ans. No.

Cross-int. 19. On the next day did you?

Ans. It was the next evening, or the evening after, when I saw the papers.

Cross-int. 20. On Wednesday, the fifth, did you see any of those papers?

Ans. I think not.

Cross-int. 21. Is that the best answer you can give to that question?

Ans. That's my answer to it.

Cross-int. 22. Is that the best answer you can give to that question?

Ans. Yes.

Cross-int. 23. Observe the form of this question. To your knowledge, was that trunk opened on the fifth of July? The question does not call for information from others.

Ans. Do you mean my own knowledge?

Cross-int. 24. Yes.

Ans. I don't know.

Cross-int. 25. On the sixth of July was that trunk opened in your presence?

Ans. No.

Cross-int. 26. Was it ever opened in your presence?

129 Ans. I have seen it open. I never saw it opened.

Cross-int. 27. When did you first see it open? State the day and the part of the day.

Ans. On the morning of the seventh, I think.

Cross-int. 28. Are you confident?

Ans. I feel very confident.

Cross-int. 29. At what hour in the morning?

Ans. About ten o'clock, I should say.

Cross-int. 30. Who were present?

Ans. Mrs. Brownell and Miss Robinson.

Cross-int. 31. Who else?

Ans. No one else.

Cross-int. 32. Did you see the trunk?

Ans. I did.

Cross-int. 33. Where was the key when you saw the trunk?

Ans. Probably in the key-hole.

Cross-int. 34. Is that the best answer you can give to that question?

Ans. Yes.

Cross-int. 35. Did you see that key in anybody's hands that morning?

Ans. I don't remember of seeing it in anybody's hands.

Cross-int. 36. Was the trunk in the closet when you first saw it? And if so, who stood by or near it?

Ans. It was in the closet—Mrs. Brownell was near it, looking into it?

Cross-int. 37. Where did Miss Robinson stand?

Ans. She was in the chamber, standing in the chamber, near the door of the closet.

Cross-int. 38. Who passed to you the yellow envelope?

Ans. Miss Robinson.

Cross-int. 39. Was it open when she passed it to you?

Ans. No.

Cross-int. 40. Did you open it?

Ans. I did.

Cross-int. 41. Did you ever state that she opened it?

Ans. I don't recollect any such statement.

130 Cross-int. 42. If you did so state, was it stated correctly, or is your statement now the accurate one?

Ans. My statement now is the accurate one.

Cross-int. 43. Did you know that an application was to be made to the court for leave to examine Miss Robinson as a witness, and did you make an affidavit to be used in the hearing of that petition?

Ans. Yes.

Cross-int. 44. Did you state in that affidavit, in substance, that Miss Robinson opened that paper and then passed it to you?

Ans. That I don't remember.

Cross-int. 45. Were you in the room when that paper was handed to Miss Robinson, as you state?

Ans. I was.

Cross-int. 46. Was Fally Brownell there?

Ans. Mrs. Brownell was there—I never knew her by any other name than Mrs. Brownell—I mean Mrs. Brownell, the housekeeper.

Cross-int. 47. Was Miss Montague present?

Ans. No.

Cross-int. 48. Was the time of which you have testified the first and last time that you saw that trunk open?

Ans. It was the first time, but not the last time.

Cross-int. 49. Was it the only time you saw it open when Mrs. Brownell was present?

Ans. I think it was.

Cross-int. 50. Are you confident it was the only time?

Ans. I have no recollection of any other time.

Cross-int. 51. What was the earliest time before ten o'clock of the morning of the seventh that you saw the white envelope?

Ans. I saw it the evening previous.

Cross-int. 52. At what time in the evening?

Ans. I should say between eight and ten.

Cross-int. 53. Who was present except Miss Robinson, if anybody?

Ans. No one.

Cross-int. 54. That envelope was open when it was passed to you, was it?

Ans. It was.

131 Cross-int. 55. That was the evening of the sixth, between eight and ten, was it?

Ans. Yes.

Cross-int. 56. You read No. 15, did you?

Ans. Which is No. 15? (Thereupon the magistrate shows him No. 15). Yes; I read No. 15.

Cross-int. 57. Did you read any other paper which was in that envelope?

Ans. I did.

Cross-int. 58. What paper?

Ans. Copy of Miss Howland's will.

Cross-int. 59. When next did you see No. 15?

Ans. That I don't remember.

Cross-int. 60. That was the evening of the sixth. How soon after that were you in New York?

Ans. I should think about a week. That's my impression.

Cross-int. 61. Fix it as nearly as you can.

Ans. About a week.

Cross-int. 62. Did Miss Robinson return to New York with you?

Ans. I think she did.

Cross-int. 63. Can you recollect whether she did or did not?

Ans. She did.

Cross-int. 64. On what day did you first see No. 10?

Ans. I couldn't say the exact date. It was after my return to New York.

Cross-int. 65. Fix it as near as you can.

Ans. I should say a day or two after I returned from New Bedford.

Cross-int. 66. With relation to the 20th of July; how near was it, one way or the other? State your best recollection about it.

Ans. It was before that—I cannot state any more.

Cross-int. 67. Was it the 18th or 19th of July, do you say?

Ans. I couldn't say.

Cross-int. 68. Did you see the plaintiff stitch that No. 10 to No. 1?

Ans. I think I do remember something of that sort.

Cross-int. 69. Did you, or not?

Ans. My impression is that I did.

Cross-int. 70. Your best recollection on that point; did 132 you, or not?

Ans. That is my best recollection.

Cross-int. 71. How soon after the stitching process did you come to Boston?

Ans. A few days after.

Cross-int. 72. Give the time as accurately as you can fix it.

Ans. I couldn't say whether it was one, two, or five days after.

Cross-int. 73. After your arrival in Boston did you see Francis C. Loring, esquire?

Ans. Yes.

Cross-int. 74. Did you show him those papers?

Ans. I did.

Cross-int. 75. Stitched together when you showed them?

Ans. They were.

Cross-int. 76. Did you show him 15 that day?

Ans. No.

Cross-int. 77. How soon after that did you go abroad?

Ans. I went on the fourth of April following.

Cross-int. 78. Did you attend the hearing before the judge of probate, in August, 1865, of the Howland will case, at New Bedford?

Ans. No.

Cross-int. 79. Where were you at that time?

Ans. I couldn't say.

Cross-int. 80. Do you state that after the 20th of July, or after the 24th of July, 1865, there was no preparation made for the trial of Miss Howland's will before the probate court?

Ans. No. I have stated no such thing. I don't recollect particularly the dates of what was done. It is matter of record.

Cross-int. 81. Did you know, at or about the time, that there was a hearing before the judge of probate?

Ans. I saw it in the newspapers.

Cross-int. 82. Was that your only means of knowledge?

Ans. I had no other means of knowledge, except from asking the people.

Cross-int. 83. Were you present at the term of the supreme court in New Bedford when the appeal in the Howland will case was disposed of?

Ans. No.

Cross-int. 84. After the twenty-fourth of July, 1865, did
133 you have any interviews or interview with any person interested under that will, or likely to be a witness, or who you thought would probably be a witness?

Ans. I don't remember any particular interview with any one.

Cross-int. 85. Did you have any?

Ans. Not that I recollect of now.

Cross-int. 86. Did you institute any inquiries as to the mode in which Miss Howland was drugged at the time of the making of the will?

Ans. No.

Cross-int. 87. Or as to the amount of opium that was given her?

Ans. No.

Cross-int. 88. What are we to understand by your calling Miss Howland's will, the Eliot and Gordon will?

Ans. To distinguish it from Miss Howland's will marked No. 1.

Cross-int. 89. Do you now state that your only motive and purpose in designating the will admitted to probate as the Elliot and Gordon will, was to distinguish it from the Exhibit F. W. P. No. 1?

Ans. I do.

Cross-int. 90. Why did you call it the Gordon as well as the Eliot will?

Ans. A fancy of my own.

Cross-int. 91. If you meant by calling it the Eliot will, to designate it as the will written by Mr. Eliot, why would not that designation suffice?

Ans. I am not aware but Mr. Eliot may have drawn other wills for Miss Howland.

Cross-int. 92. You did not mean, then, to be understood, by applying that epithet to the will, that it was procured to be made by the influence of Mr. Eliot and Dr. Gordon?

Ans. Oh, no; of course not.

Cross-int. 93. You did exert or interest yourself, did you not, to obtain evidence to show that the will was made under the undue influence of Dr. Gordon?

Ans. Not particularly; no.

Cross-int. 94. Generally?

134 Ans. No; I don't think I exerted myself in any way to get any evidence for or against.

Cross-int. 95. You knew that efforts were being made to that end, did you not?

Ans. I supposed the counsel were at work in their own way. They had charge of the case. My impression is, there were no attempts made at all after the bill was filed.

Cross-int. 96. But before that time?

Ans. That was the original idea of breaking the will by that means.

Cross-int. 97. Did you see Mr. Eliot in relation to the making of that will?

Ans. No.

Cross-int. 98. Was the evidence you gave, in relation to his being enquired of, of your own knowledge, or hearsay?

Ans. Hearsay.

Cross-int. 99. And did you understand that as a witness you were called upon to state what you got from hearsay?

Ans. I think it was in answer to a question that was asked me. You can refer to the question and see.

Cross-int. 100. When you stated that Mr. Eliot was enquired of in relation to the making of the will, and stated also the answer which Mr. Eliot gave, that he couldn't reveal professional secrets, (and which you say you got from hearsay,) and afterwards spoke of the will as the Eliot and Gordon will, do you now mean to be understood that by those pieces of testimony, taken separately or together, you meant by the terms "Eliot and Gordon will" simply to distinguish that will from F. W. P., No. 1, and to express no opinion and give no insinuation as to the way and manner in which that will was made?

Ans. Why, that makes no sense, does it? What is the question?

Cross-int. 101 I repeat the question.

Ans. It isn't English; I don't understand it; it can't be answered by no or yes.

Cross-int. 102. Is that the only answer you have to give to that question?

Ans. Yes.

Cross-int. 103. You mean to be understood that you do not understand the question?

135 Ans. Yes.

Cross-int. 104. How soon after the probate of Miss Howland's will did you leave this country, and when did you return?

Ans. I left on the 4th of April, 1866, and returned in September, arriving, I think, the thirteenth. I am not sure.

Cross-int. 105. When and where after your return did you first see F. W. P., No. 15?

Ans. I don't recollect particularly about it. I cannot answer any more than that.

Cross-int. 106. When, before you left, did you last see it?

Ans. That I don't recollect either.

4.05 p. m. Adjourned to Wednesday, February 27, 1867, at 10 a. m.

WEDNESDAY, *February 27*, 1867—10 a. m.

Cross-int. 107. Mr. Green, you have aided and assisted Miss Robinson in the preparation of this as well as the former case, have you not?

Ans. I have assisted her all I could.

Cross-int. 108. Did you advise and assist her in the retaining of counsel in the will case? meaning by that the case already disposed of?

Ans. I have assisted her in procuring all the counsel.

Cross-int. 109 Whom did you retain for her in the will case?

Ans. F. C. Loring, Sidney Bartlett, B. R. Curtis, Clifford, Crapo, Prescott. The three latter of New Bedford; the three former of Boston.

Cross-int. 110. Did you pay them their retainers?

Ans. Yes.

Cross-int. 111. From your own funds?

Ans. No.

Cross-int. 112. Did Miss Robinson give you the money to retain them with?

Ans. She did.

Cross-int. 113. Before or after the retainers were paid did she give you the money?

Ans. Before.

Cross-int. 114. In what mode was the payment made to you?

Ans. In money.

136 Cross-int. 115. How were the retainers paid?

Ans. Some in money, some in checks, I believe.

Cross-int. 116. Whose checks?

Ans. My checks.

Cross-int. 117. In all cases?

Ans. I don't recollect each individual check, or the way it was paid.

Cross-int. 118. In all cases where there were checks?

Ans. I should think they must have been my checks.

Cross-int. 119. Was money paid to you immediately preceding each payment to counsel, or a sum in gross?

Ans. I think preceding.

Cross-int. 120. Do you recollect how that fact was?

Ans. It was not paid all in gross, I know that.

Cross-int. 121. What other counsel have you retained besides those above mentioned?

Ans. I dont think of any other.

Cross-int. 122. Mr. Thaxter?

Ans. No; I never retained Mr. Thaxter.

Cross-int. 123. Was he retained with your knowledge?

Ans. What's the meaning of the word "retain"?

Cross-int. 124. For the purposes of the interrogatory, it means "employ."

Ans. No.

Cross-int. 125. Any other counsel been retained or employed by you in the case?

Ans. None that I recollect of.

Cross-int. 126. Any counsel retained in New York by you?

Ans. No.

Cross-int. 127. Or with your knowledge and advice?

Ans. No.

Cross-int. 128. In this or any other case?

Ans. I have employed counsel in other cases.

Cross-int. 129. What day in July, 1865, did you leave New Bedford after the funeral of Miss Howland.

Ans. I couldn't say exactly what day; I should think about a week after that.

137 Cross-int. 130. Was there any lady stopping at the house of Miss Howland at that time with Miss Robinson?

Ans. What time does that refer to?

Cross-int. 131. The week in July from July 4th to the time you left for New York.

Ans. My impression is that no one was staying at the house but Miss Robinson.

Cross-int. 132. From the fourth of July till the time you left for New York, what witnesses or other persons did you see and converse with in relation to the "breaking" of the will of Miss Howland, or the probate of the will of Miss Howland?

Ans. I conversed with Miss Montague—when I say "conversed," I mean I tried to get information from her—also from Mrs. Brownell—I don't think of any others.

Cross-int. 133. What day did you return from New York to Massachusetts?

Ans. I should think about the eighteenth of July.

Cross-int. 134. How long did you then remain in Massachusetts?

Ans. I should think about ten days—that's my recollection.

Cross-int. 135. During that time, what persons, witnesses or others, did you see and converse with in reference to the probate of the will of Miss Howland, or the breaking of that will?

Ans. I saw the counsel employed—I don't remember any other people particularly. By counsel, I mean the same as those mentioned. I don't recollect whether I saw them all or not.

Cross-int. 136. What portion, if any, of that time, were you at New Bedford?

Ans. I should say the greater portion of the time.

Cross-int. 137. Did you see and consult with Governor Clifford and Mr. Crapo and Judge Prescott about the case?

Ans. I had some conversation with Governor Clifford, but I don't recollect any particular conversation with the other men.

Cross-int. 138. During that time, did you go with Miss Robinson to see Keziah Price?

Ans. I have been to Mrs. Price's house, but I don't recollect whether it was at that time or not.

138 Cross-int. 139. If not at that time, was it before or after, according to your best recollection?

Ans. If it was not at that time, it must have been after.

Cross-int. 140. During that time, did you express any purpose of settling in New Bedford?

Ans. I did.

Cross-int. 141. Did you see Mr. Pardon Gray during that visit to New Bedford?

Ans. I saw a Mr. Gray—I don't know his other name.

Cross-int. 142. At what time?

Ans. It was during that month—I don't recollect particularly what day. I recollect driving to his house.

Cross-int. 143. It was after your return from New York?

Ans. That I couldn't say—I don't remember particularly enough.

Cross-int. 144. What day did you go to New Bedford at that time? I mean what day of the month of July after the eighteenth, when you left New York.

Ans. I went from New York to New Bedford.

Cross-int. 145. What day did you leave New Bedford to come to Boston?

Ans. I should think a day or two after. I don't recollect exactly whether it was the next day or not.

Cross-int. 146. Can you fix it by recollecting the day you saw Mr. Loring?

Ans. I think it must have been about the twentieth—I can't recollect the exact figure of the day.

Cross-int. 147. When did you return from Boston to New Bedford?

Ans. I think the same day that I came up.

Cross-int. 148. Did you go from New Bedford to New York?

Ans. I think not.

Cross-int. 149. Where then?

Ans. I think to Vermont.

Cross-int. 150. Did you bring F. W. P., No. 15, with you to Boston?

Ans. I think not.

Cross-int. 151. What witnesses, after the 24th of July, beside Keziah Price, if you saw her, did you see or converse with in relation to the will case?

139 Ans. I don't think any.

Cross-int. 152. Did you see Keziah—Mrs. Price?

Ans. I must have seen her; yes. I did not converse with her any more than ordinary conversation.

Cross-int. 153. Did you go with Miss Robinson to her house, and talk with the daughter, while she talked with Mrs. Keziah Price?

Ans. Yes.

Cross-int. 154. About the date of that transaction?

Ans. I couldn't give the exact date, because I don't remember the day.

Cross-int. 155. How long were you at Vermont?

Ans. About a week.

Cross-int. 156. You say, that while at New Bedford, between the eighteenth and twenty-eighth, or about that time, you did talk of settling in New Bedford. When did you cease to talk about it?

Ans. I didn't say that I thought of settling in New Bedford be-

tween the eighteenth and twenty-eighth. I haven't yet given up the idea of settling there.

Cross-int. 157. At the time that you were in New Bedford, in July or afterwards, and when you saw Pardon Gray, were you thinking of settling in New Bedford?

Ans. I was.

Cross-int. 158. Were you then intending to be married during that summer or fall?

Ans. There had never been any time fixed. (The question being repeated, by direction of the counsel for defendants, witness answers:) No.

Cross-int. 159. No such purpose was then expressed or entertained?

Ans. Not by me.

Cross-int. 160. Acting, at least, to the extent indicated in your former answers, as the agent and friend of Miss Robinson, in relation to these cases of hers, did you receive any letters from her having reference to this business; and, if so, will you produce such letters, that they may be examined by the counsel for respondents?

Ans. I don't remember receiving any letters in connection with her business matters.

140 Cross-int. 161. Will you examine and see if you have such letters; and, if so, produce them?

Ans. I will, with pleasure.

Cross-int. 162. What was the date of the retainer of Mr. Bartlett?

Ans. I couldn't tell the exact date.

Cross-int. 163. Can you tell by examining your checks?

Ans. Yes; I think so.

Cross-int. 164. Will you do so?

Ans. I will, with pleasure. I can find it out very easily.

Cross-int. 165. What documents did you bring with you to Boston, if any, besides F. W. P., No. 1, and F. W. P., No. 10?

Ans. I think no other one, except those two.

Cross-int. 166. You didn't bring this fragment with you marked F. W. P., 16, did you? or the paper of which you state it is a fragment?

Ans. No.

Cross-int. 167. When did Miss Robinson have her first consultation with counsel in Boston, so far as you know?

Ans. I think it must have been just before this bill of equity was filed. It may have been before that. I don't remember.

Cross-int. 168. Which of the counsel prepared the reasons of appeal in the case of Hetty H. Robinson, appellant from the decree of judge of probate?

Ans. I suppose Mr. Loring.

(At this point the counsel for the complainant notifies the witness that in giving his testimony he is to give not what he supposes merely to be true, but what he knows to be so, or has been informed by the complainant to be true, if the latter shall be inquired of by the defendants, and not otherwise. The counsel for the respondents object to

all instruction given by counsel for the complainant to the witness, respectfully suggesting that such instructions, when necessary or proper, come appropriately from the magistrate who presides and takes the examination, and not from counsel. After this suggestion to the witness from the counsel for the complainant, counsel for the respondents inquires:)

Cross-int. 169. Who prepared the reasons of appeal in the case of Hetty H. Robinson, appellant from the decree of judge of probate?

Ans. Either Mr. Loring or Mr. Bartlett.

Cross-int. 170. When were they prepared?

141 Ans. I don't recollect the date they were prepared, without referring to the papers themselves.

Cross-int. 171. Were they prepared at the time when they bear date, or about that time?

Ans. I suppose they were.

Cross int. 172. Previous to your leaving for Europe, in April, 1866, did you make an affidavit preparatory to the filing of a petition by Miss Robinson to be examined as a witness?

Ans. I did.

Cross-int. 173. Was that affidavit given to lay the foundation of that petition, or to show the necessity or justice of her being examined as a witness?

Ans. It was given because the counsel asked for it.

Cross-int. 174. Was it given for the purpose of supporting that petition? I repeat the question in substance.

Ans. The reason I gave it was because the counsel asked me for it, and no other reason.

Cross-int. 175. You didn't understand the object or purpose for which the affidavit was to be taken?

Ans. I understood it was to be used, if needed, in the suit.

Cross-int. 176. You understood, did you not, that you were to be absent for some time—the length uncertain—and that your testimony might be wanted before your return?

Ans. I intended to be back before anything was done.

Cross-int. 177. Please repeat the question?

(The question is repeated.)

Ans. I intended to be absent some time—the length not uncertain—intending to be back before any action was taken. I did not understand that my testimony might be wanted before my return. I intended to be back by the time I should be required.

Cross-int. 178. What time did you intend to return?

Ans. I intended to be back by the middle of May.

Cross int. 179. What was the object of taking that affidavit on the twenty-fourth of March, 1866, if there was no uncertainty about your return, and no expectation of using it in your absence?

Ans. In case of death, I suppose, it might have been used.

Cross-int. 180. Did you, or did you not, understand that

142 that affidavit was to be used to support the petition of Miss Robinson to be examined as a witness? Please answer the question as directly as possible.

Ans. No.

Cross-int. 181. What did you understand it was to be used for?

Ans. In case of my death.

Cross-int. 182. As testimony in the case, in case of your death?

Ans. Yes.

Cross-int. 183. That you understood to be the purpose of taking it, as testimony in the case, in case of your death?

Ans. Yes.

Cross-int. 184. Who prepared that affidavit? Who wrote it?

Ans. I think Mr. Loring.

Cross-int. 185. Mr. Loring also drew the bill in equity, didn't he?

Ans. I don't know.

Cross-int. 186. Did Mr. Loring show you, at that time, a petition for the examination of Miss Robinson?

Ans. I think not.

Cross-int. 187. Look at the paper I now show you, and answer, if you are able, whether that is a copy of the affidavit you then made?

Ans. I should say it was.

(The paper is put in, and marked for identification F. W. P., No. 18.)

Cross-int. 188. Have you any doubt about it?

Ans. I have no particular reason to doubt it.

Cross-int. 189. Have you any?

Ans. It isn't the original paper. I have not compared it with the original.

Cross-int. 190. Was it Mr. Loring or Mr. Bartlett who prepared the bill in equity?

Ans. I have already answered that—either the one or the other; I don't know which.

Cross-int. 191. What was the date in which the paper of which you have stated this (F. W. P., 16) to be a fragment, was destroyed?

Ans. It was near the end of November, 1865.

Cross-int. 192. What time of the day?

Ans. That I don't recollect particularly.

Cross-int. 193. Where?

143 Ans. In Miss Robinson's parlor in Beacon street?

Cross-int. 194. Were the papers thrown into the grate?

Ans. They were.

Cross-int. 195. Is that the only piece of paper that was saved from the burning?

Ans. That was all that I know of.

Cross-int. 196. Had that paper ever been in the possession of counsel before November, 1865?

Ans. That I don't know.

Cross-int. 197. Have you aided and assisted in the preparation of the case now pending?

Ans. I have been of no assistance or aid that I am aware of.

Cross-int. 198. Have you attempted to render any assistance?

Ans. In what way? I should like to know what you mean?

Cross-int. 199. Repeat the question, please.

(To the magistrate, who repeats the question, and reads cross-interrogatory 197.)

Ans. Yes; I think I have attempted it.

Cross-int. 200. What witnesses, if any, have you seen in relation to this case?

Ans. I don't recollect to have seen any.

Cross-int. 201. Are we to understand that you have had no interviews with any witnesses for plaintiff in this case?

Ans. I recollect of having none.

Cross-int. 202. Have you seen or conferred with any persons who have been examined or are to be examined as experts in this case?

Ans. No.

Cross-int. 203. Do you know of any persons who have been seen or are to be examined as experts in this case?

(Objected to by counsel for complainant as impertinent.)

Ans. No.

Cross-int. 204. Have you aided in the preparation of that part of this case?

Ans. I have not.

Cross-int. 205. From the statements of the complainant, or otherwise, do you know of any persons who are to be examined as experts?

(Objected to as impertinent.)

Ans. I do not.

144 Cross-int. 206. When you left in April, 1866, did you know that the time for taking evidence in this case would expire early in June?

Ans. I don't think I knew the time when it would expire, but counsel told me I could be gone forty-five days, I believe.

Cross-int. 207. Then when you left this country, the fourth of April, 1866, you expected to return in forty-five days, and to be examined as a witness immediately after your return, did you?

Ans. I expected to return in forty-five days, and to be examined after my return; I didn't know when it would be.

Cross-int. 208. What did you understand the limit of forty-five days had reference to, if it was not to the time of taking evidence in the case?

Ans. That it had reference to the case generally. I wished to be present when anything was done of consequence.

Cross-int. 209. Then when you left, in April, you did not expect any step was to be taken, of consequence, in the case, until your return?

Ans. Nothing in which I could be of any service.

Cross-int. 210. Did you expect Miss Robinson was to be examined before your return?

Ans. I had no idea when she would be examined. I had no knowledge as to the time when she would be examined, and I had no expectation about it.

Cross-int. 211. What was the date of your return to this country?

Ans. The thirteenth of September.

Cross-int. 212. How soon after your return in September were you spoken to in regard to giving your testimony in this case by any one?

Ans. A long time after.

Cross-int. 213. When first?

Ans. I think it was about a week ago.

Cross-int. 214. How many interviews have you had with counsel about your testimony?

Ans. I have had no particular interview about testimony, except in speaking of the case generally.

Cross-int. 215. When did you first, within the last week, state to counsel the facts to which you have testified in this examination?

Ans. In the course of conversation; I think, the middle of last week.

Cross-int. 216. What day?

145 Ans. That I couldn't remember. I kept no account of anything I did particular days.

Cross-int. 217. How many interviews have you had with counsel since you were notified, a week ago, that you were to be examined as a witness?

Ans. Four or five.

Cross-int. 218. Where were they?

Ans. Here in this office—Mr. Bartlett's office.

Cross-int. 219. Notes taken of your testimony at the time you first gave it?

Ans. Not that I am aware of.

Cross-int. 220. Didn't you see any notes taken of your testimony at either of these interviews?

Ans. None that I am aware of.

(Question repeated by direction of counsel.)

Ans. Not that I am aware of.

(Question repeated by direction of counsel.)

Ans. No.

Cross-int. 221. Do you know the fact whether any were taken or not?

Ans. No; I don't.

Cross-int. 222. Did the counsel who has examined you in this present examination have these interviews with you?

Ans. He did.

Cross-int. 223. Now, Mr. Green, were not questions in these previous examinations put to you as they were written; and did not counsel, in examining you at the present time, read to you questions?

Ans. Questions were read to me in the previous interviews. (On reading the second branch of the question, the witness answers:) That was answered before.

Cross-int. 224. Did not counsel, in examining you at this present time, read to you questions?

Ans. I don't know whether he read questions or not. He asked questions.

Cross-int. 225. Were the questions put to you by counsel

146 at this examination the same that were read to you at your interviews with him during the past week, or were any of them?

Ans. I see no resemblance in them.

Cross-int. 226. Did you attend the taking of the depositions of the experts on the part of the respondents in this case? If so, which was the earliest that you attended?

Ans. I heard some of the experts give their opinion. The first was Southworth, I think—a big, stout man.

Re-examination:

Int. 1. When you first retained counsel in Boston for Miss Robinson, did you see any of them personally; and, if so, which of them?

Ans. I saw Mr. Loring personally, and no one else.

Int. 2. Whether or not were the other counsel absent from the city?

Ans. That I don't know.

Int. 3. Did you at that time or not show Mr. Loring any papers; and, if so, what?

(Objected to as not re-examination of any matter opened by cross-examination.)

Ans. I shew him No. 10, and the original will of Miss Howland—I mean No. 1.

Int. 4. Whether or not you shew Mr. Loring any papers at the first interview you had with him when you retained him?

(Objected to as leading, and cross-examination of counsel's own witness, and as examination upon a matter not opened by us.)

Ans. I did. I shew him No. 1 and No. 10.

Int. 5. Whether or not, at the time you laid the papers before counsel, somewhere from the twentieth to the twenty-fourth of July, as you have stated, did you know, and how, that Miss Robinson claimed that there had been any agreement between her and her aunt as to their wills? If you did, what was it? Please attend to the date mentioned in this question.

(Objected to as above and as incompetent.)

Ans. I did know, at the time mentioned, that Miss Robinson so claimed. She told me of it the night the white envelope was found in the trunk when she handed it to me. She claimed that her aunt had agreed to exchange wills with her. She then told me that her aunt had given her will to her to keep, and that she had given
147 hers to her aunt, which they were trying to find.

(Answer objected to by defendants as containing statements of complainant which are wholly incompetent.)

Int. 6. At what date did you retain Mr. Loring; what day of the month?

Ans. I should say about the 20th of July.

Int. 7. You can tell this by your checks, or in some other way, can you not? If so, please refer to them, and answer to-morrow.

(Objected to as above.)

Ans. I think so, and will endeavor to do so.

Cross-examination resumed:

Cross-int. 1. When you saw Mr. Loring, about July 20th, 1865, the facts of which you now have testified were known to you as now, were they not?

Ans. I have learnt some since.
Cross-int. 2. I speak of the substantial facts.
Ans. Yes; the facts were known to me substantially.

3.45 p. m., adjourned to Thursday, February 28th, 1867—10 a. m.

THURSDAY, *February 28th*, 1867—10 a. m.

Question by counsel for plaintiff:

Have you referred to your checks to find at what date you paid Mr. Loring his retainer?
Ans. I have, and find it was July 20th, 1865.

EDWARD H. GREEN.

UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States, appointed special examiner in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., as by a
148 certified copy of said order hereto attached appeareth, do certify that on the twenty-sixth, twenty-seventh, and twenty-eighth days of February, in the year of our Lord eighteen hundred and sixty-seven, I caused to appear before me Edward H. Green, a witness on behalf of the plaintiff in the above-entitled case, and that he having been by me duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which his testimony was taken, his several answers to the interrogatories proposed to him were by me reduced to writing in his presence, and by him subscribed in my presence, in the presence of the counsel of both parties, and are hereto annexed. And that both parties were present during the examination by their respective counsel.

I further certify that the papers and paper writings hereto attached, marked respectively "F. W. P," and numbered 1, 2, 10, 11, 13, 14, 15, 16, 18, are the same papers and paper writings that were produced at the taking of the foregoing deposition, and that are therein mentioned and referred to.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the city of Boston, this fourth day of March, in the year of our Lord eighteen hundred and sixty-seven.

FRANCIS W. PALFREY,
Special Examiner.

F. W. P., No. 18.

United States circuit court, Massachusetts district.

HETTY H. ROBINSON
vs.
THOMAS MANDELL *et als.*

I Edward H. Green of New York Merchant, on oath declare that at the request of the Complainant I went to New Bedford on hearing of the death of the deft's testatrix I remained till after the funeral, on the next or succeeding day, being in the house of the deceased I was

requested by the Comp't. to come up stairs to aid her in searching for a paper she was desirous to find. I went up stairs and found the Comp't. in the room and Mrs. Brownell in a closet examining
149 the contents of a white trunk containing papers, She had been the nurse or attendant of the deceased, I knew from the conversation between Mrs. Brownell and the Comp't. that they were looking for a Will made by her and left with the deceased at her request, the papers were taken out separately by Mrs. Brownell and handed to the Comp't; after handing out several papers Mrs. Brownell found a yellow envelope upon which she said I think this is the paper you are looking for. upon which the Complainant said yes opened it handed it to me to read remarking that She had found what she was looking for, I read and found it to be the Will of Miss Robinson a copy of which is annexed to the bill of Complaint.

EDWARD H, GREEN.

DISTRICT OF MASSACHUSETTS, }
Boston, March 24, 1866. }

Subscribed and sworn to before me.

C. W. LORING,
Com'r U. S. Circuit Court for the District of Massachusetts.

A true copy.
Att:

EDWIN T. NASH,
Clerk pro tem. U. S. C. C. Mass. Dist.

Deposition of Virginia R. T. Gerrish.

Virginia R. T. Gerrish, of the city, county, and State of New York, aged forty-five years, being duly sworn, deposes and says as follows:

I am married; my husband's name is William L. Gerrish. I was residing in New York city when I heard of the death of Miss Sylvia Ann Howland. I heard of it by telegraph on a Sunday, the day she died. I was staying at that time in the same house with Miss Hetty H. Robinson. My husband, my eldest son, and myself were staying there at that time. I lived formerly in New Bedford. We moved to New York—it was two years last November. Prior to my removal from New Bedford, I had known Miss Sylvia Ann Howland very intimately. I accompanied Miss Robinson on to the funeral of Miss Howland. I stayed, while I was there, at Miss Howland's house in Eighth street.

150 Int. 1. Will you look at the papers now shown you, marked F. W. P., 1, and F. W. P., 10, and state whether or not you ever saw them before; and, if so, when and where, and who showed them to you?

(Objected to, substance.)

Ans. I have seen these papers before, at Miss Robinson's house, on Twenty-sixth street, New York. These papers were read to me

on Sunday evening, the day we heard of the death of her aunt. Miss Robinson showed them to me and read them to me.

(Having heard the question and answer read by the magistrate, the witness says, That's the way I wish it to stand.)

Int. 2. Whether or not, you had at any time, any coversation with Miss Robinson about that will, or about any will of her own? If so, when and where, and will you state it carefully and fully?

(Objected to, form and substance, and especially as calling for declarations of the plaintiff which are incompetent.)

Ans. Miss Robinson at that time told me that there was a mutual agreement between herself and auntie, and aunt—that each should make and give to the other their will, and which they both should keep, and not to make any other will without previously informing the other, and returning the will which they held in their possession to Thomas Mandell. Miss Robinson had previously made a will which her aunt had objected to, on account of a legacy which she had given her father, and compelled her to make another—or requested, either.

The witness having paused, the magistrate, at the suggestion of counsel for complainant, read the question, and counsel for complainant and counsel for respondents stated that it was fully answered. The magistrate said, "Not the when and where." Both counsel said, "Yes; she says at that time." The magistrate says, "True, that escaped my notice. It shows the when and the where, so far as that the parties were then in New York." Witness then says, "I could tell the room where we were sitting, and just where we sat." Counsel for respondents requests that this be added to the answer. Counsel for complainant says, Then the whole conversation must be recorded.

So much of the foregoing answer as follows "Miss Robinson had previously," and including those words, objected to by counsel for respondents as not responsive.)

Int. 3. When you say Miss Robinson had made another will, do you mean to say that you saw it made?

(Objected to, form and substance.)

Ans. I did not, sir.

151 Int. 4. How then did you learn that it was made, and when?

(Objected to, form and substance, and as assuming a fact not proved.)

Ans. At the beginning of the conversation she told me.

Int. 5. Whether or not, at any time, did you have any conversation with Miss Sylvia Ann Howland about any matter of money, in which Miss Robinson was in any way concerned? If so, what was it? State it fully.

(Objected to, form and substance.)

Ans. At one time, when Miss Robinson was paying a visit in Boston she offered—Miss Sylvia Ann Howland offered— her money, which she refused to take, saying that she did not wish it; she had more than she wished. Miss Howland then expressed her regret

at her unwillingness to spend money, saying that she would have it all at some time, and could not possibly make use of it.

Int. 6. Fix the time of this as nearly as you can, and state whether or not it was after or before the death of Miss Robinson's mother.

(Objected to, form and substance.)

Ans. It was after the death of the mother—the spring—in the spring of the year.

Int. 7. After the death of Miss Robinson's mother, were you present at any conversation between Miss Howland and Miss Robinson, about where Miss Robinson should reside in future? And if so, state it fully, and state how long it was after the death of Miss Robinson's mother.

(Objected to, form and substance.)

Ans. I was. Not two hours after her mother's death, Miss Howland said, "You will never leave me, Hetty; you will live with me always, and not go back to your father."

Int. 8. Whether or not, during the intimacy between you and Miss Howland that you have stated, did you have any—and if so, many or few—conversations with her in reference to Miss Robinson? If so, how did she express herself towards her?

(Objected to for substance, as leading, and as calling for the opinion of a witness upon a subject upon which her opinion is incompetent.)

Ans. She often spoke of Miss Robinson with a great deal of affection and interest; more affection than I ever heard her express for any one, with the exception of her mother. I think she was too fearful that anything might happen to her; too anxious—carefully so.

She was deprived of a great many pleasures that young ladies
152 usually enjoy on account of the anxiety of her aunt that she should take cold—be sick. On my last visit to her, the evening previous to my going to New York, she asked me if I would, as soon as convenient after my arrival there, go and see her, and write her all the particulars in regard to her, for she wished to hear directly, through me, from her.

Int. 9. Were you or not consulted in regard to the diet of Miss Howland? And, if so, under what circumstances?

(Objected to, form and substance.)

Ans. At one time she sent for me in the morning, requesting me, if convenient, to call and see her. It was inconvenient to me to go in the morning, but I went in the afternoon, and found that her physician had ordered beef-tea, which had been prepared for her by some one in the house, which she was unwilling to take, fearing that it might not be properly made, and knowing that I had been accustomed to seeing and giving them to an invalid sister which I had had. She was always extremely timid in taking anything or doing anything which she had not been accustomed to do. At no other time was I consulted in regard to the diet of Miss Howland.

Int. 10. During your various interviews with Miss Howland, was or not Miss Robinson present, frequently or otherwise?

(Objected to as immaterial.)

Ans. She was often, though not always.

Int. 11. During your interviews with Miss Howland, in which she spoke to you of Miss Robinson, did she ever say anything to you, and, if so, what, about Miss Robinson's urging or requesting her to make a will?

(Objected to, form and substance.)

Ans. Never at any time.

Int. 12. Was there or not any chamber in the house called or known as Miss Robinson's; and, if so, which was it?

(Objected to as immaterial.)

Ans. I have always understood that the northeast front chamber was Miss Robinson's room, though she didn't occupy it.

Cross-examination de bene:

Cross-int. 1. What day in July did you first hear of Miss Howland's death?

Ans. It was a Sunday. I don't recollect the day of the month.

Cross-int. 2. What part of the day?

153 Ans. In the evening, or late in the afternoon.

Cross-int. 3. About what hour?

Ans. Somewhere between five and seven.

Cross-int. 4. When did you leave for New Bedford?

Ans. On Monday afternoon, in the Newport boat.

Cross-int. 5. Did you see the telegraph?

Ans. I did.

Cross-int. 6. By whom was it signed?

Ans. By Thomas Mandell, I think.

Cross-int. 7. Did it state when the funeral was to be?

Ans. I think not, sir.

Cross-int. 8. Did you know when the funeral was to be when you and Miss Robinson left?

Ans. I did not, sir.

Cross-int. 9. How long after the receipt of the telegraph before you had this conversation, which you state, with Miss Robinson?

Ans. As soon as I had taken off my hat after coming into the house.

Cross-int. 10. Immediately upon your coming into the house, she informed you of the telegraph, did she, and then proceeded to this conversation about the will?

Ans. She informed me about the telegraph, and then we may have had—we did have—a few words of conversation before commencing about the will.

Cross-int. 11. When did she get the papers you say were read to you? Before or after the conversation you say you had about the will?

Ans. After. We had a short conversation before she took the papers.

Cross-int. 12. Did she leave the room during the conversation?

Ans. I do not recollect that she did.

Cross-int. 13. You have given us the words of the conversation, have you not?

Ans. I wasn't aware that I had given any words.

Cross-int. 14. When you state that Miss Robinson told you certain things, you do not mean, then, to give her words?

154 Ans. I did not give her words.

Cross-int. 15. What did you intend to give?

Ans. I did not intend saying anything.

(Counsel for respondents says, You do not understand the question. Witness says, I do not think I do understand the question. Counsel for respondents says, I will put the question in another form. Counsel for complainant requests that this interlocutory matter be noted.)

Cross-int. 16. When you assume to state what Miss Robinson told you, do you give us the words that she used or your idea of what she said?

Ans. I give the words that she used, as nearly as I can recollect.

Cross-int. 17. Do you recollect the words?

Ans. I do, sir.

Cross-int. 18. Then you are confident that you give us her precise language, are you?

Ans. As nearly as possible; as nearly as I can possibly recollect them.

Cross-int. 19. You say you heard the paper read, marked No. 1. Do you know whether the words which you give us came from the paper or from Miss Robinson's lips?

Ans. I heard her read the paper, and the words came from the paper.

Cross-int. 20. Was paper No. 1 passed into your hands?

Ans. I think I took it in my hands.

Cross-int. 21. Did you?

Ans. I feel quite sure that I did.

Cross-int. 22. Did you examine it?

Ans. I looked at it. I didn't read it again. I looked at it as I would look at it in this way, (taking the paper in her hands, and holding it flat before her, the first page spread.)

Cross-int. 23. Did you read what is therein written?

Ans. I did not.

Cross-int. 24. Did you read the signatures?

Ans. I did. I saw, and read it.

Cross-int. 25. What signatures did you read?

Ans. Sylvia Ann Howland. I think the three others were Thomas Mandell, Cornelius Howland, and Charles R. Tucker.

155 Cross-int. 26. The paper which you read had those names upon it?

Ans. I think so, sir.

Cross-int. 27. You say you looked at what is presented as the paper (No. 1, laying it before her) is first opened. What do you see on that page now that you didn't see then?

Ans. I don't recollect either that (pointing to "first page") or that, (pointing to "F. W. P., No. 1.")

Cross-int. 28. Did you read this paper (showing the witness F. W. P., No. 10) at that time?

Ans. I did not.

Cross-int. 29. Did you see that paper?

Ans. I think I did.

(Question and answer refer to F. W. P., 10 still before the witness.)

Cross-int. 30. Upon your oath state whether you do or not now recollect seeing that paper (F. W. P., 10) distinctly?

Ans. I think it was that paper.

(The question being repeated, witness says, Well, I think it's that paper. There might be twenty papers like it. I think it's this very paper.)

Cross-int. 31. Is it that paper which you saw?

Ans. I think it is.

Cross-int. 32. You didn't examine it with any care?

Ans. I did not read it. I took it in my hands and looked at it.

Cross-int. 33. When you looked at that paper, was there anything there which is now cut off from the top of the paper?

Ans. I do not recollect, but I am almost sure it is all here. I think it is all here.

Cross-int. 34. Did you look at both sides of that paper?

Ans. I did, sir.

Cross-int. 35. Did you observe that that paper, was evidently cut off from some other paper?

Ans. I should think it was as I see it now. The idea didn't occur to me at the time.

Cross int. 36. Then the paper which you saw in New York gave you no indication of its being cut off from some other paper?

Ans. The paper that I saw in New York was, I think, in the same form that this paper is.

(The question being repeated, at request of cross examin-
156 ing counsel, the witness says, I didn't examine it to see if it had been cut. I should judge that this was the same paper.)

Cross-int. 37. Are you willing to swear it is the same paper?

Ans. As far as it is possible for any person to know, I should say that it was.

Cross-int. 38. How do you identify that paper as the one you saw at New York, when you say there might have been twenty others like it?

Ans. I judge from the size, and that it was written more closely together than ordinary—than ordinary writing.

Cross-int. 39. Anything else?

Ans. I see nothing else, sir, how I could recognize it—why I should.

Cross-int. 40. When after you saw it at New York on the Sunday of which you speak, as you say, did you first see it again?

Ans. The day before yesterday, sir.

Cross-int. 41. Look at the paper and see what there is on it now which there was not on the Sunday of which you speak, as you say?

Ans. I do not see anything unless it is these letters on the mar-

gin and numbers. I mean "F. W. P., 10," on each page; I don't see anything else unless it was that.

Cross-int. 42. Is that the paper whose words, as read to you, you have testified to in your examination in chief?

Ans. I should say it was, sir.

Cross-int. 43. Two papers were shown you at that time?

Ans. Yes, sir.

Cross-int. 44. Stitched together?

Ans. I think not, sir.

Cross-int. 45. Were they?

Ans. No, sir.

Cross-int. 46. Are you confident of that?

Ans. I think I can feel perfectly confident.

Cross int. 47. Had they been stitched together when you saw them?

Ans. There were no more appearance of stitches then than there are now.

Cross-int. 48. Had they been stitched together when you saw them at New York, as you say?

Ans. I did not see any appearance of a stitch or stitches.

157 Cross-int. 49. Well, that's a thing a woman's eye would be apt to see, isn't it?

Ans. I should think so, sir.

Cross-int. 50. Did you observe the alteration of that "two" (pointing to last line of second page of F.W. P. 10) when you saw the paper in New York, as you say?

Ans. I don't. I didn't particularly observe the word any way.

Cross-int. 51. Did you observe that the paper No. 1, that you saw in New York, as you say, was written with different inks?

Ans. No, sir.

Cross-int. 52. No such feature of the paper attracted your attention?

Ans. No, sir.

Cross-int. 53. Did you observe any interlineations in the paper you say you saw in New York, No. 1, when you saw it?

Ans. I did not notice any, sir.

Cross-int. 54. Were there any, as you then saw it, according to your best recollection?

Ans. I cannot recollect any, sir.

Cross int. 55. And yet you made examination of those papers at that time?

(Objected to as assuming what the witness has negatived.)

Ans. I did; I examined them, sir; not closely.

Cross-int. 56. Miss Robinson told you, did she, that her aunt wouldn't let her make a will in which she gave anything to her father?

Ans. Yes, sir; she did.

Cross-int. 57. And when she had given a small present in her will to her father, she compelled her to alter it?

Ans. She did, sir.

Cross-int. 58. And after the death of her mother, you say Miss Howland told Miss Robinson that she mustn't live with her father?

Ans. I did, sir.

Cross-int. 59. That was so, was it?

Ans. It was so, sir.

Cross-int. 60. Did you know Mrs. Robinson, and, if so, how long had you known her?

158 Ans. I have always known her, ever since I can recollect anything—from a child.

Cross-int. 61. And this conversation, in which Miss Howland told Miss Robinson she mustn't live with her father any more, was within two hours of the death of Mrs. Robinson, was it?

Ans. After the death, it was, sir.

Cross-int. 62. Where was Mr. Robinson at that time?

Ans. In New York, sir, I think.

Cross-int. 63. At whose house was this that this conversation took place, if it took place?

Ans. In Miss Howland's house—in her own room.

Cross-int. 64. How near was the dead mother lying then to that room in which this conversation took place between the aunt and the niece?

Ans. In the room directly opposite.

Cross-int. 65. Doors opened or closed?

Ans. I think Mrs. Robinson's door was closed, as they were attending to the last duties. Miss Howland's door, I think, was open.

Cross-int. 66. It was, then, while these offices were being paid to the remains of Mrs. Robinson, and while the father was absent in New York, that this conversation took place between the aunt and the niece, in which the aunt told her she mustn't live with her father any more?

Ans. Yes, sir.

Cross-int. 67. And what said the niece?

Ans. I do not think she replied at the time.

Cross-int. 68. Did she object?

Ans. I do not think she replied.

Cross-int. 69. Had Mr. Robinson then any any other child?

Ans. No, sir.

Cross-int. 70. What did you say to the proposition?

Ans. I said nothing at all, at that time.

Cross-int. 71. Do you know the fact whether Miss Robinson at that time entertained any hostile or unkind feelings towards her father?

Ans. I do not know that she did.

Cross-int. 72. Any knowledge, either way, on that point?

Ans. I have not, sir.

159 Cross-int. 73. Did Miss Robinson tell you, in New York, that she had made a solemn contract with her aunt? I refer to the Sunday before spoken of.

Ans. She did, sir.

Cross-int. 74. Did she use those words?

Ans. She did not, sir.

Cross-int. 75. What words did she use?

Ans. "Promise" in the place of "contract."

Cross-int. 76. She didn't say "mutual agreement," then?

Ans. She may have said both "mutual agreement" and "promise." It was mutual between them.

Cross-int. 77. And she said her aunt couldn't make any other will, didn't she, on account of that agreement?

Ans. Yes, sir.

Cross-int. 78. And if any other will was made, she said she could stop it by that agreement, didn't she?

Ans. I don't recollect that she said it in those words. I don't recollect it.

Cross-int. 79. Did she say it in substance?

Ans. I don't—I have no recollection of it.

Cross-int. 80. Didn' tshe say (now observe the question, please—your attention is not called to the words she used, the language she used, but the ideas she expressed, upon showing you the paper) in substance, that it would prevent her aunt's making another will, or prevent their setting up any other will?

Ans. I don't think she conveyed that idea to me at that time.

Cross-int. 81. She spoke of another will's being made, did she not?

Ans. I don't think she spoke positively of another will's being made.

Cross-int. 82. Did she speak of another will having been made?

Ans. I do not think she did at that time.

Cross-int. 83. Are you able to swear that she did not?

Ans. I think not.

Cross-int. 84. When did you go to New York?

Ans. In November—two years ago last November.

Cross-int. 85. Did you go to housekeeping in New York?

Ans. No, sir.

130 Cross-int. 86. Upon going to New York, did you go to Mr. Robinson's house?

Ans. I did not, sir.

Cross-int. 87. Before Mr. Robinson's death, did you or your husban go to reside in Mr. Robinson's family?

Ans. No, sir.

Cross-int. 88. How soon after his death?

Ans. I think it was the Saturday after his death—Friday o Saturday.

Cross-int. 89. Before Mr. Robinson's death, and after you went to New York in November, 1864, do you know whether Miss Robinson resided with her father?

Ans. She did, sir.

4.15 p. m., adjourned to Saturday, March 9, 1867—9 a. m.

SATURDAY, *March* 9, 1867—9 a. m.

Cross-int. 90. How long did you reside in Miss Robinson's family, you and your husband, in New York?

Ans. We were there, I think, till the middle of October, with the exception of a month which we passed in the country.

Cross-int. 91. What position did you occupy in the family, if any?

Ans. As a friend.

Cross-int. 92. Your husband's position in the family?

Ans. He slept there.

Cross-int. 93. Is that your only answer to that question?

Ans. It is, sir.

Cross-int. 94. Who else composed that family, besides Miss Robinson, yourself, and your husband?

Ans. My son, and servants.

Cross-int. 95. Your son remaining there also as a friend, with the family?

Ans. He was there the same as my husband, at night.

Cross-int. 96. In what business was your husband engaged at that time?

161 Ans. Druggist.

Cross-int. 97. What servants were there in the family—Miss Robinson's family—at that time?

Ans. Part of the time two, and sometimes only one.

Cross-int. 98. Did Miss Robinson remain at home during that summer?

Ans. Not all the time.

Cross-int. 99. Mrs. Robinson died about the twentieth of February, 1860, did she not?

Ans. I did not recollect the day of the month. She died about that time.

Cross-int. 100. Were you with her when she died?

Ans. In the house, but not in the room.

Cross-int. 101. The nearest point of time you saw her before her death?

Ans. I cannot recollect certain; but I should think within a week of her death.

Cross-int. 102. Are you willing to state that it was within a week?

Ans. I cannot positively state; but should think it was.

Cross-int. 103. Who attended her as physician?

Ans. At the time of her death?

Cross-int. 104. In her last sickness.

Ans. I was thinking of her last illness; whether her old physician was present at her last illness. I think he was; Dr. Spooner.

Cross-int. 105. Was he?

Ans. I feel quite positive that he was.

Cross-int. 106. Of what disease did Mrs. Robinson die, if you know?

Ans. I cannot say whether it was disease of the heart or apoplexy.

Cross-int. 107. Did you get to the house that day before she died, or after?

Ans. I was in the house when she died.

Cross-int. 108. At what time after Mrs. Robinson's death did Miss Robinson make a visit to Boston? Give the date as near as you can.

Ans. It was in the spring. I cannot give the date.

Cross-int. 109. In what part of the spring?

162 Ans. April or May, I should think.

Cross-int. 110. Will you say it was in one of those two months?

Ans. I think it was.

Cross-int. 111. Was it?

Ans. I think it was.

Cross-int. 112. What time did you go to Round Hills that summer?

Ans. I couldn't say at all; I have no recollection.

Cross-int. 113. You didn't go, did you?

Ans. I went in the morning and back at night.

Cross-int. 114. Once?

Ans. Yes.

Cross-int. 115. Who went with you?

Ans. Miss Howland, nurse, coachman or driver, myself.

Cross int. 116. Which nurse was that?

Ans. Monty, Electa Montague.

Cross-int. 117. Where was your house at New Bedford?

Ans. Irving court.

Cross-int. 118. How far from Eighth street?

Ans. I cannot judge correctly of distances, but should think a quarter of a mile.

Cross-int. 119. How often were you at Miss Howland's house in the spring of 1860.

Ans. That depended somewhat on circumstances. Sometimes I ran in for two or three days every day in succession. Then perhaps I wouldn't be in for a week. I suited my own convenience and pleasure.

Cross-int. 120. Any time that it is now your convenience and pleasure to recall when you ran in two or three days successively, you will be kind enough to state?

Ans. I cannot do it, sir.

Cross-int. 121. You were asked if you were called upon to consult about the diet of Miss Howland. Before your examination yesterday, had you told any one that you were called upon to consult about the diet of Miss Howland?

Ans. In only one instance I was called upon. I had spoken of it in my own family. I think I spoke of it in the office here—Mr. Bartlett's office.

163 Cross-int. 122. Did you speak of it as showing your intimacy with Miss Howland?

Ans. Not at all, sir.

Cross-int. 123. For what purpose then?

Ans. To show her timidity, and how fearful she was that something might happen to her.

Cross-int. 124. That, then, was the purpose with which you made the statement before you were examined, and when you were examined?

Ans. It was, sir.

Cross-int. 125. Was there any other subject upon which her fears were alarmed besides beef-tea? Any matter of diet that you know of.

Ans. I have no other personal knowledge of diet. In one case, of medicine.

Cross-int. 126. Fix as nearly and accurately as you can the date of the beef-tea transaction?

Ans. It is entirely impossible for me to do it.

Cross-int. 127. The year?

Ans. It was some time after Mrs. Robinson's death, and my removing to New York; I cannot be positive.

Cross-int. 128. Who were present when this conversation as to the beef-tea took place?

Ans. I cannot positively say—the nurse, of course—perhaps Mrs. Brownell.

Cross-int. 129. By "the nurse," you mean Electa Montague?

Ans. She, or Eliza Brown.

Cross-int. 130. Which?

Ans. I cannot say—perhaps both.

Cross-int. 131. With whom was Miss Robinson making a visit in Boston, in the spring, after the death of her mother, and when you say the conversation took place with her aunt, of which you have testified?

Ans Mrs. Loring, I think; I could not give the rest of the name, only Mrs. Loring.

Cross-int. 132. How long had she been gone when the conversation took place?

Ans. I am sure I couldn't say.

Cross-int. 133. Who were present at the conversation
164 when, as you say, Miss Howland spoke of the unwillingness of her niece to spend money?

Ans. I could not say, sir.

Cross-int. 134. Anybody but yourself and Miss Howland?

Ans. The nurse might or might not have been present; I could not say.

Cross-int. 135. Didn't you uniformly find the nurse there when you went there, or, if not one of the nurses, Mrs. Brownell?

Ans. I always found some one with her.

Cross-int. 136. Please answer the question.

Ans. Sometimes Mrs. Howland, sometimes Miss Robinson—Mrs. Peleg Howland—I occasionally found her with only Miss Robinson and Mrs. Peleg Howland. (The last sentence after another repetitin of cross-interrogatory 135, by the magistrate, by request of counsel for respondents.)

Cross-int. 137. Was any one of these persons present at this conversation—Mrs. Howland, Mrs. Brownell, Miss Montague, or Mrs. Brown?

Ans. I cannot say with certainty that there was any person with her at this moment, as they were passing in and out, and I was alone often with Miss Howland.

Cross-int. 138. Did your intimacy with Miss Howland lead her to consult you as to the making of her wills?

Ans. She never spoke to me on the subject.

Cross-int. 139. In this conversation which you fix somewhere in the spring of 1860, did Miss Howland tell you whether she had a will or not at that time?

Ans. She never spoke to me on the subject of a will at any time.

Cross-int. 140. In giving the conversation in your examination in chief, which you say you had with Miss Howland in reference to her niece's unwillingness to spend money, have you given us the language which Miss Howland used on the occasion?

Ans. The substance, entirely correct; the language, as nearly as I can recollect.

Cross-int. 141. She said she would have all the money, did she, some time? All the money some time?

Ans. She did, sir.

165 Cross-int. 142. And in immediate connection with that, that she could never use it?

Ans. Yes, sir.

Cross-int. 143. The connection of the remark struck you at the time, didn't it, and does now?

Ans. It was all spoken at that time without any interruption. (Counsel for respondents requests the magistrate to repeat the question, and he does so. The witness says:) I don't know that I understand the question.

Cross-int. 144. How long before you went to New York did Miss Robinson go there?

Ans. I think the spring previous to my going in the fall.

Cross-int. 145. When, for the first time, did you repeat to any one the conversation which you say you had with Miss Howland in the spring of 1860 about the unwillingness to spend money?

Ans. To my husband, perhaps the same day.

Cross-int. 146. When were you first notified that you were to be a witness in this case?

Ans. Last Wednesday.

Cross-int. 147. When did you first understand that you were to be a witness in this case?

Ans. Last Wednesday.

Cross-int. 148. You say, if I understand you, that you went to Miss Robinson's house immediately after the death of her father?

Ans. Yes—a few days—a day or two after.

Cross-int. 149. When was that—what was the date?

Ans. I do not recollect the date—it was either Friday or Saturday of the week of his death.

Cross-int. 150. How soon after you went there did she begin to talk of breaking her father's will.

(Objected to for impertinence in the legal sense.)

Answer. I don't know that she talked at all about it.

Cross-int. 151. Will you swear that she did not?

(Objected to as above.)

Ans. I can, I think.

Cross-int. 152. Can you?

Ans. I think I can, sir.

166 Cross-int. 153. Do you swear she did not?

Ans. Yes, sir; I am quite sure that I can.

Cross-int. 154. Do you?

Ans. I am quite sure that I can, sir.

Cross-int. 155. After she heard of her aunt's death and will, was it, that she began to talk of breaking her father's?

(Objected to as before.)

Ans. We never had any conversation about breaking her father's will.

Cross-int. 156. Or about the circumstances under which her father's will was made?

Ans. A remark that is made is not a conversation, is it?

Cross-int. 157. Yes.

Ans. There was no conversation whatever—only the simple remark that she did't consider her father in a proper state of mind at the time of his making his will. No conversation between us. Nothing said by me, and nothing said by her but that.

Cross-int. 158. When was that said?

Ans. Before her father's death; I cannot say when.

Cross-int. 159. How soon before her father's death was it said, as near as you can fix it?

Ans. In two or three months; less than three months.

Cross-int. 160. Was she speaking of the will her father had made?

Ans. She spoke only of that.

Cross-int. 161. Of the will he was about to make?

Ans. The will was made.

Cross-int. 162. And you mean to testify that that remark, as to her father's not being in a suitable condition to make a will, was introduced by nothing, and followed by nothing, on that subject? And, if yea, how did you know that her father had made a will?

Ans. With the exception of telling me that he had made his will.

Cross-int. 163. Refreshing, as well as you are able, your recollection on that subject, please state what else was said by her at that interview about her father's will.

Ans. Nothing, sir. He was very ill, indeed, at that time.

Cross-int. 164. Did Miss Robinson ever say anything to you in relation to the mode in which her father's will was procured

167 to be made, and whether any force was used in making the will, either before or after his death?

(Objected to as above.)

Ans. No, sir.

Cross-int. 165. Nothing on that subject?

Ans. No, sir.

Cross-int. 166. Who came into the house in October—Miss Robinson's house—to live?

Ans. Colonel Bowman, I think his name was, bought the house.

Cross-int. 167. Who came with him to live in the house?

Ans. I think his family consisted of a wife and niece; but I am not positive what his family was.

Cross-int. 168. Did you remain in the house, after Colonel Bowman bought it, any time.

Ans. I did, sir; a few days.

Cross-int. 169. I understand you you came here on Wednesday last to testify in this case; am I right?

Ans. Yes, sir.

Cross-int. 170. Did you state what you could testify to any person, and were notes taken of your testimony?

Ans. To Mr. Bartlett; I think notes were taken; I am not sure.

Cross-int. 171. Were you spoken to to be a witness in relation to the probate of the will of Miss Howland?

Ans. I was not, sir.

Cross-int. 172. When Miss Robinson spoke to you about being a witness in this case, or in any conversation about the will of her aunt, or at any other time, not confining yourself to any particular language used, has she not, in substance and effect, given you to understand that you would lose nothing, or wouldn't be harmed or prejudiced, whether her aunt's will was sustained or not?

Ans. No, sir.

Cross-int. 173. Have you ever had any conversation with her on that subject?

Ans. No, sir.

Cross-int. 174. Have you ever heard of a list—a list of certain persons—that found its way into a spectacle case?

Ans. Yes, sir.

168 Re-examination:

Int. 1. Have you, since the adjournment of yesterday, read the two papers, marked F. W. P., 1 and 10, now handed you? And does that or not enable you to say whether or not those are the papers read to you, as you have stated, on Sunday night, by Miss Robinson?

(Objected to as irregular, as re-examination upon a matter not opened by us, as leading in form and incompetent in substance.

Ans. I have read these papers. They do. They are. I should say they were the same.

Int. 2. In all your intercourse with Miss Sylvia Ann Howland, did you or not ever, at any time, and, if so, when, hear Miss Robinson either ask or urge her aunt to make a will?

(Objected to as re-examination upon a matter on which the witness has already been examined, not opened by cross examination, as irregular, leading in form, and otherwise incompetent.)

Ans. I never did, sir.

Int. 3. Will you look at your answer to the twenty-fifth cross-interrogatory, and state carefully whether it is or is not correct?

(Objected to as irregular, as leading, and as otherwise incompetent in this stage of the examination, it not having appeared that the witness had expressed any desire to correct her answer to that question.)

Ans. I knew that I had answered incorrectly as soon as I had spoken the names. I told Mr. Bartlett of it the first opportunity I had of speaking to him. I think at recess. He said that I could arrange that all after it was finished—I could make that all right. (To the magistrate.) Shall I give the names now?

Int. 4. Yes; please state how the error occurred, if it is an error, and state whether, when you made the answer, you had the paper before you?

(After the reading of the question, the counsel for the complainant directs the striking out of the "Yes," and the counsel for the respondents objects, stating that the question must be put as recorded, or withdrawn and a new question put, and that it cannot be amended after objection made and recorded. The magistrate had recorded no objection. Counsel for complainant asks a ruling on right to have the "Yes" stricken out. The magistrate rules that it may be. Thereupon the question is put without the "Yes"—under objection to question as irregular, leading, and otherwise incompetent.)

169 Ans. Am I to answer now?

Int. 5. Yes.

Ans. I think the paper was before me. I had read the paper carefully previously in the morning. I am always confused in recollecting names and dates. Go on? (Magistrate, Yes.) In my anxiety to give my answer correctly, I became confused, and gave the wrong names, which I knew as soon as I had spoken them. It has annoyed me very much during the examination till I had spoken to Mr. Bartlett about it, which I did the first opportunity.

Cross-examination de bene resumed:

Cross-int. 1. What do you mean by "the recess"?

Ans. When the gentlemen went into the adjoining room.

Cross-int. 2. Was that the time you spoke to Mr. Bartlett about it?

Ans. It was, sir, I think.

Cross-int. 3. Are you able now to swear that you spoke to Mr. Bartlett about it before the adjournment last evening?

Ans. I am very sure I can, sir.

Cross-int. 4. Did you speak to him about it before that time, and, if so, was it in this room or the adjoining room?

Ans. I think so, sir. It was in this room, sir.

Cross-int. 5. Are you confident on that point?

Ans. I feel quite sure, sir.

Cross-int. 6. As sure as of any fact you have stated?

Ans. I think so, sir.

Cross-int. 7. Did you not look at Miss Robinson after you had

made the answer, and did you not observe her distress upon the matter?

Ans. I did not, sir.

Cross-int. 8. Whom did you see after the adjournment last evening, and before you came here this morning?

Ans. I went with my son and Miss Robinson to the Japanese jugglers. It would be impossible to tell the names of the persons I saw there.

Cross-int. 9. Anybody else go with you?

Ans. No one, sir.

170 Cross-int. 10. How soon after the adjournment did you see Mr. Bartlett?

Ans. This morning, sir—a few moments before Judge Thomas came.

Cross-int. 11. Did he produce and show you those papers?

Ans. He did, sir.

Cross-int. 12. If you knew the signatures to those papers, and recollect them, and only failed to answer the question correctly yesterday because of the confusion of mind into which you then fell, after the confusion of mind had passed away, what occasion was there to see the papers again for the purpose?

Ans. Mr. Bartlett wished me to look at the papers carefully, to be sure whether they were the same I saw in New York.

(At this point, as the magistrete was about to read the deposition to the witness, prior to presenting it to her for signature, Mr. Bartlett, before the magistrate began to read, was obliged to go away. Before he left the room, the witness said to him, "I want to know if I am to be asked any more questions, for I don't choose to be examined except in your presence." Counsel for defendants asked that this be record d. Counsel for complainants, as he went, left the matter to the magistrate; who recorded it.)

VIRGINIA R. T. GERRISH.

UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States, appointed special examiner in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., as by a certified copy of said order hereto attached appeareth, do certify, that on the eighth and ninth days of March, in the year of our Lord eighteen hundred and sixty-seven, I caused to appear before me Virginia R. T. Gerrish, a witness on behalf of the plaintiff in the above-entitled case; and that she having been by me duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which her testimony was taken, her several answers

171 to the interrogatories proposed to her were by me reduced to writing in her presence, and by her subscribed in my presence, in the presence of the counsel of both parties, and are hereto annexed; and that both parties were present during the examination by their respective counsel.

I further certify that the papers and paper-writings hereto at-

tached, marked respectively "F. W. P.," and numbered 1–10, are the same papers and paper writings that were produced at the taking of the foregoing deposition, and that are therein mentioned and referred to.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the city of Boston, this thirteenth day of March, in the year of our Lord eighteen hundred and sixty-seven.

FRANCIS W. PALFREY,
Special Examiner.

Deposition of George H. Morse.

George H. Morse, of Dorchester, Massachusetts, aged forty-six years, being duly sworn, testifies as follows:

(After swearing the witness, the further examination is postponed to Tuesday, April 16, 1862—9.30 a. m.)

TUESDAY, *April* 16, 1862—9.30 a. m.

I am a plate engraver in Boston. I have carried on that business about twenty-six years for myself. I have had great experience in my particular branch, engraving commercial documents, such as bills of exchange. For several years, perhaps five or six, I have worked more than half the time on bank-notes—all sorts of commercial plates. There's perhaps a dozen different uses we put them to. I have had experience of engraving handwriting. I have engraved some writing-books for copies, and a good many autograph letters for publication; and some, I should say some thousand of autograph cards—address cards. Those autograph letters that I recollect at this moment were for Mr. Prescott, for his history of Philip the Second, I
172 believe, and some for Mr. Geo. Bancroft, the historian. It's so long ago that I don't reccollect how many there were for him, nor what they were for, nor whether they were used; I have no recollection at all. I have had experience of making fac-similes of handwriting. Those were mostly for cards—address cards. The work for Mr. Prescott was intended to be fac-simile.

Int. 1. Please state in what way fac-similes are made, and what, if any, knowledge of tracing you have.

Ans. I make them by laying a piece of transparent paper over the original, and then tracing it carefully with a lead pencil. It is then laid upon a piece of copper covered with white wax melted on thin. The paper is burnished upon the back with a common burnisher. The paper is then removed, leaving the impression upon the plate. I have had experience of tracing in some of these various matters, I can't say how many, even approximately, through so many years.

Int. 2. Have you or not examined, and, if so, with any and what degree of care, and for what purpose, the signatures "Sylvia Ann Howland" to the three papers now shown you by the examiner, marked F W. P., and numbered respectively 1, 10, and 15, and the enlarged photographs of the same in the pocket attached to the cover of the large book marked R. vs. M., F. W. P., now shown you by

the examiner, marked respectively F. W. P., photograph, A., F. W. P., rider, A.? Also the signatures "J. Q. Adams" to papers now shown you by the examiner, marked Adams, F. W. P., and numbered respectively 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101? Also the signatures "C. A. Walker" to the papers now shown you by the examiner marked Walker, F. W. P., and numbered respectively 623, 633, 555, 579, 575, 623a, 656, 679, 670, 669, 582? Also the signatures "Joseph B. Spear" and the words "very respectfully, your obedient servant," immediately over and preceding said signature in the papers now shown you by the examiner, marked Spear, F. W. P., and numbered respectively 4 , 10, 5, 6, 8, 20, 24, 26, 27, 29, 33, 34, 35, 39, 40, 41, 43, 44, 48, 49, 52, 54? Also the signatures "Stephen Fairbanks" to the paper now shown you by the examiner, marked Fairbanks, dividend 41, F. W. P., and papers marked Fairbanks, F. W. P., and numbered respectively 205, 114, 272, 311, 312, 370, 422, 706, 740, 747, 619, 1423, 2191, 1660, 355,
2303, 2365, 822, 843, 1347, 1583, 1682, 1837, 1838, 2021,
173 2061, 1860, 2150, 2074? Also the signatures "Sam'l W. Swett" to papers now shown you by the examiner, marked Swett, F. W. P., and numbered respectively 36, 30, 46, 34, 41, 35, 39, 37, 12, 38, 152, 143, 29, 144, 57, 127, 48? Also the signatures "F. W. Palfrey" to papers now shown you by the examiner, marked Palfrey, W. S. D., and numbered respectively 285, 282, 279, 277, 274, 271, 265, 270, 260, 246, 238, 226, 218, 216, 214, 206, 174, 171, 170, 163, 159? Also the signatures "Geo. C. Wilde" to papers now shown you by the examiner marked Wilde, F. W. P., and numbered respectively 11, 60, 59, 56, 52, 44, 35, 29, 27, 25, 19, 17, 14, 13, 8, 6, 5, 4, 3, 1? Also the small and enlarged photographs of the signatures "J. Q. Adams," "C. A. Walker," "Joseph B. Spear," "very respectfully," "Your obedient servant," "Stephen Fairbanks," "Sam'l W. Swett," "F. W. Palfrey," "George C. Wilde" on plates from 1 to 14, inclusive, in the book now shown you and before referred to, and the riders to these photographs in the pockets attached to these plates, and which are marked respectively F W. P., Plate 1, and F. W. P., Plate 1, Rider 1, Rider 2, Rider 3, R der 4, Rider 5, F. W. P., Plate 2, and F. W. P., Plate 2, Riders 1, 2, 3, 4, 5, 6, 7, 8; F. W. P., Plate 3, and F. W. P., Plate 3, Riders 1, 2, 3; F. W. P., Plate 4, and F. W. P., Plate 4, Riders 1, 2, 3; F. W. P., Plate 5, and F. W. P., Plate 5, Riders 1, 2; F. W. P., Plate 6, and F. W. P., Plate 6, Riders 1, 2; F. W. P., Plate 7 and F. W. P., Plate 7, Riders 1, 2, 3; F. W. P., Plate 8, F. W. P., Plate 8, Rider 1; F. W. P., Plate 9, F. W. P., Plate 9, Riders 1, 2, 3; F. W. P., Plate 10, F. W. P., Plate 10, Riders, 1, 2, 3, 4; F. W. P., Plate 11, F. W. P., Plate 11, Riders 1, 2; F. W. P., Plate 12, F. W. P., Plate 12, Riders 1, 2, 3; F. W. P., Plate 13, F. W. P., Plate 13, Riders 1, 2; F. W. P., Plate 14, F. W. P., Plate 14, Riders 1, 2?

Ans. I have examined the "C. A. Walker" signatures inquired of very carefully, for the purpose of seeing whether they would cover. Also the signatures "Joseph B. Spear" and the words "very respectfully, your obedient servant," inquired of and very carefully, to see if

they would cover. I have examined the "Stephen Fairbanks" signatures inquired of also very carefully, to see if they would cover. I have examined the "Sam'l W. Swett" signatures inquired of carefully, to see if they would cover. Also the "F. W. Palfrey"
174 signatures very carefully, to see if they would cover. Also the "Geo. C. Wilde" signatures carefully, to see if they would cover. Also the small and enlarged photographs of the signatures mentioned in the question, and the riders to these photographs mentioned in the question very carefully, to see if they would cover.

(Counsel for respondents request that it be noted that each branch of the question was put to the witness separately.)

Int. 3. State whether in examining the signatures which you state you have examined for the purpose of seeing whether they would cover, you made any and what examination of the enlarged photographs referred to and in what, if in any, way they aided you in such examination in regard to the question of covering?

(Objected to for form and substance, and as above.)

Ans. I have examined them with a great deal of care. I found they aided me very much in discovering the discrepancies between the various originals and the photographs from the originals.

Int. 4. From the examination which you state you have made of the signatures of Sylvia Ann Howland to papers F. W. P., 1, 10, and 15, and of the enlarged photographs and riders thereto of those signatures before referred to, and of the other signatures and photographs and riders which you have testified you have examined, please state what you found in regard to the other signatures covering as compared with the three signatures of Sylvia Ann Howland before referred to, placing F. W. P., 10 and 15, over F. W. P., 1.

(Respondents object to the question so far as it relates to papers claimed to be signatures of other persons than Sylvia Ann Howland, or the photographs of such signatures, and so far as it refers to papers claimed to be photographs of papers F. W. P., 1, 10, and 15, in the absence of any evidence that Nos. 1, 10, and 15 have been photographed, or that photographs of Nos. 1, 10, and 15 have been made or are produced.)

Ans. (Witness, before answering, requests to see the large photographs of 1, 10, and 15, stating that it is merely for the purpose of refreshing his recollection of the numbers.) I find a large number that I think cover quite as well. Some, I think, better.

Int. 5. Will you look at the signature of Sylvia Ann Howland to the paper now shown you, marked R. C. P., 4, and at the signature Sylvia Ann Howland to the paper now shown you, marked R. C. P., 42; also at the photographs of "Sylvia Ann Howland" on Plate
175 2 of book marked R. vs. M. F. W. P., marked 4 and 42 on said plate, and state, by placing signature number 4 over signature No. 42, how they compare as to covering with F. W. P., 15, placed over F. W. P., 1.

(Objected to as assuming a fact not proved.)

Ans. (While the witness is examining the papers, counsel for respondents desire it noted, counsel for plaintiff states to him that he

may have the question read to him as many times as he desires if he does not understand it. This after the witness had stated he did not recognize what papers they were which he was last requested to compare; that he thought at first they were the large photographs.)

Recess, 1 p. m. to 2 p. m.

Ans. I have examined them very carefully. I find that in the photograph marked F. W. P., Plate 2, in placing the rider in the way you suggested, there's a closer correspondence than there is in the other two signatures mentioned in the question, both in the length of the name and in the general uniformity of the letters.

Int. 6. Please state whether you have compared the papers mentioned in the last interrogatory with a view to forming an opinion, prior to the present time? and, if so, when and how many times and how carefully?

(Objected to as before, and as leading.)

Ans. I have, twice before; and as carefully as I conceived possible in the time occupied in doing so. It was, I think, on Friday and Wednesday of last week. I am not certain of the days.

Int. 7. Please look at the signature Sylvia Ann Howland to papers 1, 10, and 15, and state as to the signatures on 10 and 15, whether you see any and what indications that the same were or were not made in any way by tracing, in your judgment; and what, if any examination you have made in forming that judgment?

Ans. I see no indications of it whatever. I have examined both the large and small photographs shown me of the signatures of Sylvia Ann Howland and the others contained in the book. I took first the originals—the Miss Howland's signatures—both large and small, and after examining them carefully, I took some of each of the other names—those which seemed the nearest to cover—and ex-
176 amined them with equal care, and returned, after examining one set in the book, to the three original signatures of Miss Howland. I also examined each set by reversing the riders, so as to make them cover different ones each time. I did the same with the original signatures—the three Miss Howland's—15, 10, and 1, F. W. P.

Int 8. Please state whether or not you made any, and what, examination in placing the signature Sylvia Ann Howland to paper F. W. P., 15, over the signature Sylvia Ann Howland to paper F. W. P., 1, with a view to see whether one signature could or could not have been traced from the other, and, if so, with what result?

(Objected to for form.)

Ans. I have. I think it could not. I made the examination I stated in the previous answer

(Counsel for respondents requests the magistrate to state here that the witness, while answering, has before him F. W. P., Photograph A, and F. W. P., Rider A.)

Int. 9. Will you give the reasons for your last answer?

Ans. I think the discrepancies between the transparent photograph, marked F. W. P., Rider A, and the photograph card, marked

F. W. P., Photograph A, are too great to admit of its being done in that way. That appears to me to be the only reason.

Int. 10. Whether or not, by using the original signatures instead of the photographs, do you come to a different or the same conclusion?

(Objected to, for form, as leading.)

Ans. The same.

Int. 11. Supposing the signature to F. W. P., 15, to have been traced from the signature to F. W. P., 1, by being placed over the same, state whether or not any, and, if so, what, and if any, how many movements of the paper F. W. P., 15, would have to be made in order to place each letter and part of a letter of the signature to F. W. P., 15, over the corresponding letter in the signature to F. W. P., 1, in tracing?

(Objected to for form.)

Ans. Yes, there would have to be made movements of the paper, —movements to the right and to the left. It would take—it would be difficult to tell how many, without taking a good deal of time.

Int. 12. Assuming the signature of Sylvia Ann Howland to paper F. W. P., 1, to be genuine, state, from the examination which you have made of that signature, and of the signature Sylvia Ann Howland to the papers F. W. P., 10 and 15, whether or not, in your
177 opinion, said signatures to F. W. P., 10 and 15, are or are not genuine; and whether you have examined any, and what other signatures of Sylvia Ann Howland, in forming or arriving at that opinion.

(Objected to for form and for substance.)

Ans. I think they are genuine. I have examined a large number in the book marked R. vs. M.—F. W. P. I mean a large number of signatures of Sylvia Ann Howland in the large book referred to. That is all, I believe, I have to answer to that question.

Int. 13. Whether or not, before forming that opinion, you had examined the original signatures of Sylvia Ann Howland to the papers now handed to you, namely, exhibits marked R. C. P., and numbered from 1 to 51, inclusive, excepting the number 31?

(Objected to as above.)

Ans. I had.

Cross-examination:

Cross-int. 1. What experience have you had, if any, in the comparison of handwritings in your business?

Ans. I have had none other than preparing autograph letters and signatures, preparing them for engraving, and tracing them from the originals.

Cross-int. 2. Do you remember ever to have been called upon to examine a signature, with a view to determining whether it was genuine?

Ans. I do not.

Cross-int. 3. What instances, if any, can you state where you have

yourself made engravings of signatures, where accuracy of resemblance was required?

Ans. Those I did for Mr. Prescott are the freshest in my mind at present.

Cross-int. 4. What, in your present recollection, were those signatures, and when did you engrave them?

Ans. I couldn't tell.

Cross-int. 5. About how long ago was it done?

Ans. I should think from fifteen to eighteen years ago.

Cross-int. 6. How many signatures do you recollect to have engraved at that time?

Ans. I think four or five.

178 Cross-int. 7. But you cannot recall any of the names, can you?

Ans. I cannot.

Cross-int. 8. Can you state what papers were then given you to make your engravings from?

Ans. One or two, I think, were autograph letters of Philip the Second.

Cross-int. 9. Were they originals?

Ans. I presume they were.

Cross-int. 10. Do you remember whether they were or not signed, and, if so, how?

Ans. I think they were, but I am not sure. I don't know that they were entire letters, they might have been parts.

Cross-int. 11. Excepting those Prescott papers, do you now recall any personal engraving of handwritings where accuracy was of importance?

Ans. I recollect doing one from the city records—the old city records.

Cross-int. 12. When and what was that?

Ans. I can't call it to mind distinctly.

Cross-int. 13. Do you now recollect any other instances?

Ans. None excepting autographs for address cards. There they seem to be as particular about accuracy as anywhere.

Cross-int 14. When you desire to be accurate, how do you proceed in your work?

Ans. In tracing an autograph letter, I should fasten a piece of the clearest tracing paper I could procure upon the original, and fasten it at the corner by using (I usually use white wax) ordinary wax, and also at the sides, if it's necessary, in order to make everything perfectly steady, secure; it is then traced with a soft or hard pencil as may be best suited to the character of the writing copied; it is then placed in a reversed position on the copper, prepared also with a thin coating of wax, and then burnished lightly upon the back; the pencil marks adhere to the wax on the plate, and give a perfect impression, provided it is correctly traced.

Cross-int. 15. That process or some similar is necessary, is it not, in order to give a perfect impression?

Ans. Yes, sir.

179 Cross-int. 16. In preparing address cards, what other mode of proceeding have you?

Ans. I have no other but that, excepting in tracing the original name given me and transferring that, instead of tracing from that, as in the other case. In copying the autograph letters, of course they are too valuable to be destroyed, and the burnishing would probably destroy them. Consequently I used a careful tracing from those; but, in case of the card, the person will perhaps give me a half a dozen of his own, and I would take the best one, and simply trace it over carefully with a pencil, right on it, using a glass, and then apply that to the wax-coated plate.

Cross-int. 17. But to secure accuracy, you must trace, must you not?

Ans. Yes.

Cross-int. 18. What if the paper was not fastened as closely as you describe?

Ans. You would be liable to make an imperfect tracing.

Cross-int. 19. Suppose one paper was folded over the other, what would be the probable result?

Ans. If it were folded carefully over both sides, it might do very well, but not so reliable as if fastened.

Cross-int. 20. Suppose it were folded over but one side?

Ans. I think there would be no certainty of getting a good tracing in that way.

Cross-int. 21. When did you first see any papers in connection with this case?

Ans. I think about the middle of last week. I have forgotten the day.

Cross-int. 22. When were you first spoken to about the case?

Ans. I think about two days before I came here and first saw the papers.

Cross-int. 23. What papers did you see at that time first?

Ans. F. W. P., Photograph A, I think, with the rider.

Cross-int. 24. Was that all?

Ans. No; I saw also the papers I have examined to-day; all of them, I think, with the exception of the bundle of papers marked R. C. P., and numbered.

180 Cross-int. 25. Who were here with you, aiding in the examination?

Ans. Mr. Thaxter was here.

Cross-int. 26. Any others?

Ans. No, sir.

Cross-int. 27. How long were you here? Do you recollect?

Ans. About three hours and a half the first time.

Cross-int. 28. Were these papers, at that time, all in the condition they now are—arranged as they now appear?

Ans. Very nearly so.

Cross-int. 29. State what examination you yourself at that time made, if you remember.

Ans. As near as I can recollect, the original signatures of Sylvia

Ann Howland and the photographs, large and small, from the same; also, Adams', Walker's, and Spear's, I recollect as being among the first that I looked at. I might have gone farther, but I can't positively say. I recollect those three distinctly.

Cross-int. 30. How long after that before you next saw the papers, and what did you then see?

Ans. Two days after, I think, I then saw the remainder of these that I now see here. Fairbanks, photographs and originals; Geo. C. Wilde, photographs and originals; Sam'l W. Sweet, photographs and originals; F. W. Palfrey, photographs and orignals; photographs of Sylvia Ann Howland, and originals. I think that is all.

Cross-int. 31. Who were here at that time, and how long were you here?

Ans. Mr. Thaxter was here. I was here, I think, about four hours.

Cross-int. 32. What kind of examination did you make? Whether with the naked eye, or aided in any way, and how?

Ans. I examined the small signatures with the ordinary magnifying glass which I use in my business.

Cross-int. 33. Describe that glass.

Ans. It magnifies nearly one hundred per cent., not quite. Perhaps I have set it high. The first small signatures I examined were those of Sylvia Ann Howland—the three originals, with the riders, as you call them; also, those of Adams, C. A. Walker, and Joseph B. Spear. I couldn't state positively whether I saw the paper now handed me, marked Adams, F. W. P., 101. I couldn't state
181 positively whether I saw and examined the paper now handed me, marked Adams, F. W. P., 12. I feel quite sure I saw the paper now handed me, marked Adams, F. W. P., 24. I think I recollect the name that it is paid to, together with the minutes in pencil, the small memorandums under the name of the payee. I couldn't recollect whether the pencil figures on this were the same as those on the check I saw, but my impression is I saw this paper before, but I couldn't swear to it. I did not myself make any mark on any of these Adams checks, so as to identify it. I could swear to having seen one name on one of these checks—I recognize that at once. With the exception of the one I have spoken of, I couldn't swear positively to having seen any one of these Adams checks, that the examining counsel has shown me before.

4.30 p. m.—Adjourned to Wednesday, April 17, 1867, 9.30 a. m.

WEDNESDAY, *April* 17, 1867—9.30 a. m.

I examined the signatures carefully, but didn't pay much attention to the contents of the papers shown me, any of them, and put no mark on any of them. I have no means of recognizing the papers mentioned in the long question, No. 2, as the identical papers I examined previously, except in the case of the paper you showed me yesterday, Adams—F. W. P., 24—that had a peculiar name upon it, which I recognized at once.

Cross-int. 34. Will you now state which ones of the papers re-

ferred to in second question in chief you can now specify as the papers which you put the one over the other?

Ans. The signatures of Sylvia Ann Howland. (Counsel for respondents says, The question refers to papers. Witness says, Do you mean the riders?) I don't know what to understand exactly by that. The only papers used to cover the one over the other were the transparencies.

Cross-int. 35. You did not, then, superimpose any of the papers purporting to be originals one upon the other?

Ans. I did so, I think.

Cross-int. 36. If you cannot identify the papers now shown as the particular papers you then saw, can you specify either of these
182 papers as the papers which you did superimpose, the one upon the other? If so, name them.

Ans. The signatures of Sylvia Ann Howland, I think, were the only ones. The Sylvia Ann Howland papers.

Cross-int. 37. Were the papers purporting to be photographs, which you then examined, contained in this book, R. vs. M., F. W. P., as they now appear?

Ans. Yes, sir; they were.

Cross-int. 38. When you commenced your examination, state, if you please, what was the first request made by Mr. Thaxter?

Ans. He requested me to examine the various papers and photographs he showed me carefully, in any way I thought fit, to ascertain whether they would cover or not.

Cross-int. 39. Were you desired to place any particular paper over any particular other paper?

Ans. I was. I was requested to place the signatures of Sylvia Ann Howland one over the other. I was requested to place the signature to No. 4—bill of sale—over No. 42. I have forgotten the numbers of the three original papers. I think it was photographs of 4 and 42 that I was requested to place the one over the other. I think I could not specify now any other papers that Mr. Thaxter requested me to place the one over the other. I have no means of identifying the papers now shown me as 4 and 42 with the papers I then examined with those numbers except the pencil numbers under the seals. (Around those pencil numbers the magistrate now draws an ink line, and against the border thus made sets his initials.) These pencil numbers were not made by me. I am not positive they have not been erased and made again. I recollect there were pencil numbers there, 4 and 42. I can't, from the marks I see there now, say with accuracy that these are the two papers I saw then. I did not then observe that the signatures Sylvia Ann Howland, on papers 4 and 42, were written on ruled lines, as they now appear to be.

Cross-int. 40. In making the comparison between those two signatures and the others, of which you have testified, you did not take that circumstance into consideration, then?

Ans. Does that refer to the two original signatures of Miss Howland alone?

183 Cross-int. 41. In making the comparison between 4 and 42,

it ref to certain signatures produced by the plaintiff as original signatures of Miss Howland—I mean Nos. 1, 10, and 15.

Ans. I did not.

Cross-int. 42. Now look at Plate 19 of Book R. vs. M., F. W. P., and what purports to be a photograph of No. 4 attached to it, and then look at Plate 23 of said book, and what purports to be a photograph of No. 42 attached to it, and see what difference you notice in the structure of the S as it appears in the photographs of 4 and 42 on those plates.

Ans. In the Photograph 4, Plate 19, the loop at the top of the S is smaller, and in 42, Plate 23, there appears to have been an addition or alteration in the top of the letter.

Cross-int. 43. What is the difference between the loop of 4 and 42? How much wider is one than the other?

Ans. The loop in 42 is something more than double the size.

Cross-int. 44. The letters S in those two signatures cannot be made to cover, can they?

Ans. No; I think not.

Cross-int. 45. Please observe, in these two signatures, the space between the S and the y in No. 4, and between the S and the y in No. 42, taking the beginning of the y in each case, and state how they differ in width—I refer to Plates 19 and 23.

Ans. I should say about an eighth of an inch.

Cross-int. 46. Look at the letter y in No. 4, and the letter y in No. 42, and state whether they can be made to cover in any way.

Ans. Not perfectly.

Cross-int. 47. Do you often find two letters written by the same hand differ more widely than those two y's differ?

Ans. Yes, sir.

Cross-int. 48. Observe the space between the y and the l on Plate 19, No. 4, and the space between the y and the l on Plate 23, No. 42, and state what is the difference in width, measuring in each case from the stroke—the commencement of the stroke on the left of the l.

Ans. Rather more than the eighth of an inch, I should think.

Cross-int. 49. Look at the connection of the letters l and v on No. 4, Plate 19, and the letter v itself, and the connection of the
184 l with the v in 42, Plate 23, and the letter v itself, and state how they differ in the form of the letter v, and the space between the l and the v.

Ans. In Plate 23, No. 42, the connecting line between the l and v is straighter, and the v somewhat larger. In No. 4, Plate 19, the v is a simple blot, instead of being open, like the v in 42.

Cross-int. 50. Look at No. 4 on Plate 19, and No. 42 on Plate 23, and say how the second n in Ann in the former compares with the second n in Ann in the latter, in respect to being on the line.

Ans. The second n in Ann in No. 42, Plate 23, is considerably above the line. In 4, Plate 19, the second n in Ann is almost exactly on the line.

Cross-int. 51. Just look at the H in No. 4, Plate 19, and the H in No. 42, Plate 23, and state how they differ from each other.

Ans. In No. 4, Plate 19, the first part of the H runs a little below the line. The loop in the first part of the H, both at top and bottom, are open and distinct. Also the loop at the last part of the H. In 42, Plate 23, the loop at top and bottom of first part of the H are not open and distinct, and the bottom of the H, first part, comes exactly on the line.

Cross-int. 52. There is no way, is there, in which the letters H in 4 and 42 can be made to cover each other?

Ans. Not perfectly.

Cross-int. 53. Nor with much approach to perfection?

Ans. Nor with much approach to perfection.

Cross-int. 54. Well, acting on your judgment as an artist, you would not have selected 4 and 42 as signatures which particularly resembled or covered each other.

Ans. I think not, sir.

Cross-int. 55. In comparing two signatures, and with a view to ascertain whether the one was a tracing from or imitation of the other, supposing the pen in writing not to be guided by a ruled line, what importance, if any, would you attach to the curvatures or arcs or departures from a base line made by the signature as a whole, or the different words in the names, or the different parts of the words?

Ans. In case of tracing, it should be very near, very accurate, if well done. I don't see how there could be any considerable departure, if done with much care. (The magistrate reads the
185 question again.) My answer was confined to the tracing. It says also, imitation. In an imitation with the pen, there might be some slight difference; there probably would.

Cross-int. 56. In those curvatures of the signatures, or departures from a base line in the signatures and the nearness in the identity of the one signature to the other in those curvatures, rather than in the exact finish of the letters, wouldn't you look for the evidences of tracing, if done by an unskilful hand and imperfectly?

(Objected to.)

Ans. I think I should, sir, quite as much.

Cross-int. 57. If, then, you saw two signatures, or what purported to be two signatures, of an apparently unskilful writer, where the measurements of those curvatures, say as many as twelve different ones, were found to correspond, as those in no other signatures of the party did, would it not excite a suspicion in your mind as to the mode in which one of the two signatures was prepared?

(Objected to.)

Ans. I don't think it would upon that alone, sir.

Cross-int. 58. Add to that correspondence measurements between the different words of the name and the different parts of the words, syllables, or letters, and what then?

Ans. If they were very perfect, I should suspect them.

Cross-int. 59. Wouldn't the correspondence between those curvatures, where the party was not writing on a drawn line, and the spaces,

and where the party was evidently not a practised writer, be quite remarkable, according to your observation and experience?

(Objected to.)

Ans. Not unless they corresponded very exactly.

Cross-int. 60. Have you ever been called to examine any cases of tracing of handwriting where the parties were not artists—in court or elsewhere?

Ans. I have not, sir.

Cross-int. 61. When you say if the correspondences were not exact you would not think it very remarkable, were you not speaking of work in your own profession, by artists, rather than the work of unskilful persons outside?

Ans. I was speaking of what I should expect to find in a careful tracing made by any one.

186 Cross-int. 62. Do you think that any apparent and superficial resemblance between the signatures of such an artificial, mechanical, and abnormal hand as that of Dr. Walker, furnished you any light or aid in determining whether the signatures to papers Nos. 1, 10, and 15, by Sylvia Ann Howland, were genuine or not?

(Objected to for form, as assuming facts not proved, and otherwise incompetent.)

Ans. Yes, sir.

Cross-int. 63. What aid?

Ans. The accuracy with which the Walker enlarged signatures cover.

Cross-int. 64. That furnished you the aid?

Ans. Yes, sir.

Cross-int. 65. Do you mean to say, as an artist, that they do cover accurately?

Ans. Most remarkably, sir.

Cross-int. 66. That is, it is a most remarkable circumstance that these signatures should cover as they do?

Ans. It seems to me so, sir.

Cross-int. 67. When you say it is remarkable, you mean that it is a circumstance which very rarely occurs in your experience or observation, do you?

Ans. Yes, sir.

Cross-int. 68. Ever occur; such a case as Dr. Walker's before?

Ans. Many of those I examined last week were about as good—some of them.

Cross-int. 69. Well, taking living and dead men, as they have, do you known any other seven cases like them?

Ans. I do not, sir.

Cross-int. 70. Well, taking these cases that are so peculiar and exceptional in their character, do they enable you to judge what is probable or reasonably to be expected to occur in other cases where no such peculiarity exists?

(Objected to as assuming facts not proved, argumentative, and otherwise incompetent.)

Ans. I don't know that it would.

Cross-int. 71. Did you happen to know what Dr. Walker writes or rather paints with?

(Objected to as assuming a fact not proved.)

Ans. No.

187 Cross-int. 72. Can you tell whether these signatures of Dr. Walker are made with a pen or a goose-quill?

Ans. No, sir; I could not, with any certainty.

Cross-int. 73. What's your opinion about it—your best judgment?

Ans. I should think they must have been done with a quill; all of them in the same way.

Cross-int. 74. Well, sir, looking at 575 and 579 on Plate 4, do you say that these enlarged photographs of signatures of Dr. Walker cover?

(Plaintiff's counsel asks the magistrate to note that he called the attention of the witness to the riders to these signatures, and that counsel for respondents answered that he didn't ask the witness to look at the riders. Counsel for respondents objects to the interruption as irregular, as the counsel for the respondent was examining the witness on certain names as they appeared in the book, and upon differences supposed to be apparent to the eye without any riders, and that this remarkable interruption is somewhat more remarkable from the fact that there is no evidence in the case that the book produced contains either photographs or riders of any signatures which have been put in evidence in the case.)

Ans. Comparing them by the eye, I think they do, remarkably—remarkably.

Cross-int. 75. Look at the terminations of the letter r in 575 and in 579, and state how they compare with each other.

(Counsel for plaintiff wishes it noted that witness is looking at Plate 4.)

Ans. The termination of the r is somewhat longer, about an eighth of an inch, I should think—rather more than the termination of the r in 579. In that part, they would not cover perfectly.

Cross-int. 76. How is it with the k in each of those?

Ans. The form seems to correspond almost exactly, the upper one being somewhat heavier.

Cross-int. 77. If you were making a fac-simile of the k and r in 575, and didn't get any nearer than the k and r in 579, would you think you had done a nice piece of work?

Ans. I should not.

Cross-int. 78. From these marks on these photographs, you understand that they were selected for their resemblance, do you not?

Ans. I do.

Cross-int. 79. And after all, the resemblance between these

188 photographs of C. A. Walker is rather in general appearance than in minuteness of detail, is it not?

Ans. No, sir; I think not. I think both are remarkable—very.

Cross-int. 80. Now, will you look at the papers shown you, and

place the signature marked C over the signature marked D very carefully, and say if you do not find that they match.

Ans. They cover very nearly, indeed.

(The papers shown the witness are a thin one, marked F. W. P., Photograph B., and a card, marked F. W. P., Photograph C.)

Cross-int. 81. Look at the exhibits marked F. W. P., No. 1, and F. W. P., No. 10, and say if they are not written on paper of the same character and width.

(Objected to for form and substance.)

Ans. I should say they were.

Cross-int. 82. Now move Exhibit No. 10, so that the signature shall be directly under the signature of Exhibit No. 1, and say if you do not find the letter S, in signature to F. W. P., No. 1, directly over the letter S in signature to F. W. P., No. 10, and examine the margin of the two papers where the signatures are written, and see if they are not of the same width?

Ans. I do find the letters S as in the question, and the margins are of the same width, so far as I can judge by my eye.

Cross int. 83. Now look at the last part of the letter d in Howland—the tail of the d—in No. 10, where the hand of the writer left the paper, and say if you do not find it to be longer than the tail of the corresponding letter in No.1?

Ans. I do.

Cross-int. 84. Now place the papers as they were when you compared the margins of the two, with the heavy stroke of the d in 10 as nearly as you can get it on the heavy stroke of the d in 1, and say if you do not find the heavy stroke of the d in No. 1 directly over the heavy stroke of the d in No.10.

Ans. Not exactly.

Cross-int. 85. Now move paper No. 10, and place the signature over paper No. 1, carefully and accurately as you can, and say if you do not find those signatures to match.

Ans. I can't see them through.

189 Cross-int. 86. Well, what you mean is, that you can't see but one signature?

Ans. Yes, sir.

(The witness having looked at papers 1 and 10 against a glass, now says in answer to cross-interrogatory 85 repeated:)

Ans. My impression is that they do not very well.

Cross-int. 87. Why do you call it an impression?

Ans. Because I couldn't get a perfectly satisfactory look at the two in that manner. It was more guess-work than anything.

Recess—1 p. m. to 2 p. m.

Cross-int. 88. What kind of a day is this?

Ans. I should say it was rainy and dark.

Cross-int. 89. Referring again to exhibit marked F. W. P., Photograph C, and rider marked F. W. P., Photograph B, will you superimpose Signature C, in rider upon Signature D, in Photograph C,

accurately, and state what differences you observe, and state how the signatures correspond.

Ans. I observe a slight difference in the S; also a slight one in the upper part of the y in the first name; also in the capital A, and the first n in Ann. The signatures correspond very nearly, with those exceptions; very accurately, with those exceptions.

Cross-int. 90. What do you mean when you use the word "indications" of tracing?

Ans. I mean simply the close resemblance between the two. Not any indications of pencil marks, or of being done with pencil otherwise.

Cross-int. 91. You mean, do you not, such closeness of resemblance as an engraver would require?

Ans. Will you please read the previous one?

(The magistrate does so.)

Ans. I do.

Cross-int. 92 Could you tell whether an engraving was made by an impression from the original or a traced copy?

Ans. How an impression, sir?

Cross-int. 93. Suppose I were to write my name in pencil,
190 I suppose an impression might be taken directly from the original. Suppose I were to write my name in ink, and a tracing be made by a skilful engraver, and an impression taken from the copy traced, would there be any mode of determining which was which, ordinarily?

Ans. If it was done very carefully, I think not.

Cross-int. 94. When you say, then, that you observe no signs of tracing in No. 15, what is it that you mean?

Ans. I mean that the differences between the two were—appear to me to be greater than they would have been if done with care in that way.

Cross-int. 95. Do I get your meaning? If No. 15 had been carefully traced from No. 1, it ought to have borne a closer resemblance?

Ans. I want to ask whether the one you enquire about is the one I have been examining last?

Cross-int. 96. It is not.

Ans. Yes.

Cross-int. 97. Suppose a genuine signature, like that of Sylvia Ann Howland on F. W. P., No. 1, should be traced by an unskilful hand in papers not fastened as you describe, how would you detect it?

Ans. Well, judging from my own experience in tracing, although I think it might be possible to do it accurately, I think there would be likely to be some noticeable discrepancies between the original and the tracing.

Cross-int. 98. Have you been in the habit of examining erasures in papers for the purpose of detecting any remains of the writing?

Ans. I have not.

Re-examination:

Int. 1. Will you look at the papers referred to by the defendants, marked F. W. P., Photograph C, and F. W. P., Photograph B, and place the upper signature in the Rider B over the lower signature, marked D, in Photograph C, so that the capital S in Sylvia will best cover, and state how the rest of the words and letters cover or differ?

(Objected to as examination upon a matter not opened by respondents, and in relation to the subject-matter of which the witness has been examined in chief.)

Ans. The greatest difference seems to me to be in the length
191 of the entire name. Also the l in Sylvia somewhat shorter. The termination of the d, also, in the last name.

Int. 2. Please look at the l in Howland, and state how the upper one covers, if at all, the lower one.

(Objected to as above and as leading.)

Ans. It only covers where the hair-line crosses, connecting it with the a following, that I can discover.

Int. 3. How far, if at all, apart are the down-strokes of the said l in the upper name from the down-strokes of said l in the lower name?

(Objected to as above.)

Ans. At the top they nearly touch; at the bottom they are quite far apart, nearly—I can't state what distance without measuring them.

Int. 4. In what direction would you have to move the upper paper, from left to right or from right to left, in order to place the l last referred to in the upper paper over the corresponding l in the lower paper, so as to make the best cover?

(Objected to as above.)

Ans. From left to right.

Int. 5. Making the best cover of these two l's, how will the d at the end of the word in the upper paper cover its corresponding letter in the lower signature?

(Objected to as above.)

Ans. Not very well.

Int. 6. In what direction will you now have to move the upper paper, in order to make the best cover of that d in the upper paper with the corresponding d in the lower paper from left to right or from right to left?

(Objected to as above.)

Ans. From right to left.

Int. 7. From whom, if any one, did you first receive, and where, the papers and photographs and riders, all of them, referred to in the question 2 of the direct interrogatory?

(Objected to as above.)

Ans. From Mr. Thaxter, I believe, and in the next office to this of Mr. Thaxter's—Mr. Richardson's office.

Int. 8. Whether or not you examined any, and what, other papers or photographs or riders which you have referred to in your direct

examination, which were not placed in your hands by Mr. Thaxter, which you did not receive from him?

(Objected to as above.)

Ans. I think not.

Int. 9. Look at the exhibits marked Walker, F. W. P., 679, and Walker, F. W. P., 669, and say whether or not they are written on paper of the same character and width.

192 (Objected to as leading, as re-examination on matter not opened by respondents, and as calling for incompetent and immaterial testimony so far as it relates to any handwriting other than that of Miss Howland.)

Ans. I think they were.

Int. 10. Taking those exhibits, and placing No. 669 over No. 679, so as to bring the printed word "Superintendent" over that word in the exhibit below; also the printed words "Lunatic Hospital" over the same words in the exhibit below, state whether or not, and if so, how perfectly, the signature to 669 covers that to 679, while the exhibits are held in that position.

(Objected to as leading, as re-examination upon matter not opened by respo dents, and on which the witness was examined in chief, and as calling for incompetent and immaterial testimony.)

Ans. It does not cover perfectly. The first three capitals do not cover very closely. The remaining five do, pretty nearly.

Int. 11. Taking the same exhibits, and placing the signatures over each other as before, and matching them as well as possible, state whether or not there is any difference, and, if any, what, of space between the two extremities of the two signatures and the perpendicular printed lines upon the right and left of the exhibits respectively.

(Objected to as above.)

Ans. I can't discover any.

Int. 12. Taking exhibit marked Walker, F. W. P., 656, and placing over it exhibit marked Walker, 623 a, please answer the same question as the last.

(Objected to as above.)

Ans. There is, in this one.

Int. 13. How much, and on which side?

(Objected to as above.)

Ans. A little more than the width of the line itself, on the left.

Int. 14. Before you made the examination referred to in your answer to the second interrogatory in chief, what, if any, personal investigations had you yourself made as to whether the handwriting or signature of any individual or individuals might or might not cover; and how thoroughly, if at all, had you made such investigation?

(Objected to as above.)

Ans. None whatever.

193 Cross-examination resumed:

Cross-int. 1. Please to put Walker, F. W. P., No. 679 on No. 669 of the same, and match the capital A's, holding it up to the light in the best way, and matching the capital A's carefully and as

well as you can, independently of all the rest of the paper, and after you have done so, state whether the printed lines and words correspond.

Ans. Not perfectly.

Cross-int. 2. Repeat the same experiment with the W, matching it by itself, independently, and as well as you can, and then state if the printed lines and letters of the two papers correspond.

Ans. They do not perfectly.

Cross-int. 3. Repeat the same experiment with the l in Walker, and state as above.

Ans. They do not correspond.

Cross-int. 4. Repeat the same experiment with the k, and state as above.

Ans. They do not.

Cross-int. 5. Place terminal point of the signature to 679 on the terminal point of signature 669, and state whether the margins of the paper on the right of the signatures agree as to width.

Ans. They do not.

Cross-int. 6. Please to take Nos. 623 and 656 and superimpose the signature to former on latter, (I am speaking of Walker papers,) match the capital C's independently of other things as well as you can, taking it up in your hands and holding it out plain and smooth, and state whether the printed lines and words of the papers correspond.

Ans. They do not.

Cross-int. 7. Repeat the experiment with the capital A's, and state as above.

Ans. They do not.

Cross-int. 8. Repeat the experiment with the capital W's, and state as above.

Ans. They do not correspond.

Cross-int. 9. Repeat the experiment with the k's in Walker, and state as above.

194 Ans. They do not.

Cross-int. 10. Place the terminal point of the signatures on these two papers—the signatures of C. A. Walker—in exact connection, and state whether the margins of the two papers agree in width.

Ans. They do not.

Cross-int. 11. I perceive the signatures of Osmyn Brewster on these two papers, and also on 669, and the signature of George A. Curtis on 679. All your answers as to signatures have referred to those of C. A. Walker, have they not?

Ans. They have.

Cross-int. 12. And all the signatures of C. A. Walker that you have examined are written on short, straight lines, printed for the reception of signatures, and leading up to the word "Superintendent," are they not?

Ans. They are.

Direct examination resumed:

Int. 1. Whether or not you know by sight or otherwise Albert S. Southworth, a photographer, and, if yea, whether or not has he been present during the morning of this day while your examination was proceeding?

Ans. I don't know him.

GEO. H. MORSE.

Deposition of Thomas C. Mullin.

Thomas C. Mullin, of the city of Boston, aged twenty-four years, by occupation a penman, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that the examination of the witness is made de bene esse, without waiving any objection to the testimony offered by the respondents in regard to the genuineness of the signature, Sylvia Ann Howland, to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents not waiving any right, are ready to proceed with the examination.)

I first taught penmanship with A. R. Dunton, about six
195 years ago, about that time, in Boston; Mr. Dunton was a teacher of penmanship. About three years ago I opened an office at 43 Niles' block, and did ornamental penmanship and copying. About a year ago last fall I was engaged in teaching penmanship in New York, for a time with a Mr. Rice, on Broadway— I can't give his initials—and afterwards in the same city with—I did the ornamental penmanship for Mr. Paine, who has a commercial college on the corner of the Bowery and Canal street. (Counsel for respondents object to this portion of it as immaterial.) One year ago last January I engaged with Mr. Eaton, as teacher of penmanship and as ornamental penman at his college in Boston, and have been with him ever since, and am with him now. I have been engaged in ornamental penmanship, or ornamental pen-work, to a considerable extent. In fact, that has been my chief support.

Int. 1. In the occupations which you have thus stated, you have followed for the last six years, whether or not your attention has been called or given, and, if so, to any and what extent, to the characteristics of handwritings and signatures.

Ans. Yes, sir; in the way of business my attention has frequently been directed in that direction. In several instances I have been called upon to express an opinion as to the genuineness of signatures.

Int. 2. State whether or not your acquaintance with penmanship and writing, and of the characteristics of handwritings and signatures, is such that you are or are not able to detect false or simulated from genuine signatures.

(Objected to, as calling upon the witness for his opinion upon a matter to be determined by the court upon the whole evidence.)

Ans. I consider that I am; that I am qualified to do so.

Int. 3. Please look at the papers now shown you by the examiner, marked F. W. P., and numbered respectively 1, 10, and 15, and state

whether or not you have made any examination of the signatures Sylvia Ann Howland to those papers, and if so, with any and what degree of care.

(Objected to for form.)

Ans. I have examined them carefully.

Int. 4. Please look at the papers now shown you by the examiner, marked R. C. P., and numbered 1 to 51, both inclusive, excepting No. 31, and state whether or not you have made any and what examination of the signature Sylvia Ann Howland to those papers.

196 Ans. Yes, sir; I looked over this file of papers, and examined the signatures very carefully.

Int. 5. Assuming the signature of Sylvia Ann Howland to paper marked F. W. P., 1, to be genuine, and assuming, also, that the signatures Sylvia Ann Howland to the said papers marked R. C. P. are genuine, please look at the signature Sylvia Ann Howland to papers F. W. P., 10 and 15, and state whether or not you have arrived at any and what opinion or conclusion as to whether these last two signatures are or are not genuine.

(Objected to, the witness not being shown to be qualified as an expert.)

Ans. I believe them to be genuine.

Int. 6. State whether or not, in the examination of the signatures of Sylvia Ann Howland to said papers F. W. P., 1, 10, and 15, you have superimposed or placed either, and which, of said signatures over the other, and if so, with what result, and with what, if any, effect upon the conclusion which you gave in your last answer.

(Objected to for form, and as above.)

Ans. I have placed both of the signatures over the signature to F. W. P., 1, and find the general characteristics, the general appearance, the same. It confirms my opinion that the signatures are genuine.

Int. 7. Placing signatures Sylvia Ann Howland to F. W. P., 10, and to F. W. P., 15, over the signature Sylvia Ann Howland to F. W. P., 1, state whether or not you have or have not seen other signatures of other persons which cover as well as those signatures, or how otherwise?

(Objected to, form, and, so far as it refers to signatures of persons other than Miss Howland, as calling for immaterial testimony.)

Ans. I have seen other signatures that cover quite as well.

Int. 8. State in what kinds of handwritings or signatures, if any, you would or would not expect to find writings or signatures of the same person, when superimposed, which would cover as said signatures to said papers F. W. P., 10 and 15, cover signature to F. W. P., 1.

(Objected to, form and substance.)

Ans. I should think it would be the case with persons who wrote a cramped or mechanical hand. I should think it would be likely to be the case with a person who hadn't a good command over the pen, or a free use of their hands, but wrote carefully, letter by let-

197 ter, as a lame man would walk, step by step. If it is necessary for me to explain what I mean, I can more carefully.

Int. 9. Please take the plate marked F. W. P., Photograph A., and the transparency marked F. W. P., Rider A., now handed you by the examiner, and place signature No. 15 on the Rider A. over signature 1 on plate marked Photograph A., so that the signature 15 covers 1 as closely as it can be made to cover, and then take the plate marked F. W. P., Plate 24, and the riders marked F. W. P., Plate 24, Rider 1, and F. W. P., Plate 24, Rider 2, now handed you by the examiner, and place Signature 4 on one of said riders, over Signature 42, on said Plate 24, so that the signature on the rider will cover the signature beneath as well as it can be made to, and state, when thus placed, which signature best covers the one over which it is placed, said Signature 15 or said Signature 4.

(Objected to for form, and because the papers to be shown to witness are not shown to be photographs of any papers in the case, nor of any signatures of Sylvia Ann Howland.)

Ans. I think this one (pointing) covers the better, the 4 over the 42.

Int. 10. Still keeping said Signature 15 over said Signature 1, place the signature numbered 26 on rider marked F. W. P., Plate 24, Rider 1, over the signature numbered 23, on plate marked F. W. P., Plate 24, and make the same examination, stating the result as you were requested to state in the last answer.

(Objected to as above.)

Ans. I think it is quite as good—not better, but quite as like.

Int. 11. Please state what is quite as good.

Ans. The similarity between 26 on Rider 1 to Plate 24, and 23 on Plate 24, F. W. P.

Int. 12. Still keeping said Signature 15 over said Signature 1, repeat the same examination with the signature 23 on rider marked F. W. P., Plate 24, Rider 1, placed over Signature 44, on the plate marked F. W. P., Plate 24.

(Objected to as above.

Counsel for respondents object to the answers to questions from 9 to 12, both inclusive, as immaterial and matters of common observation, and about which the witness has no peculiar qualification.)

Ans. It's not better, but not a great difference in the similarity.

Int. 13. State whether or not in the examination which you made of the signatures Sylvia Ann Howland to said papers R. C.

198 P., 1 to 51, except 31, and to F. W. P., 1, 10, and 15, you found said signatures to have been written with any and what degree of uniformity or regularity as well as to length of signatures and of the words of the signatures and the spacings of the words, as to the general characteristics of the signature, or how otherwise.

(Objected to for form and substance.)

Ans. I found them to be remarkably uniform, remarkably alike in general appearance, very uniform as to length of the signatures, and very similar in respect to the spacings of the words.

Cross-examination:

I was first called upon to make these examinations in this case three or four weeks ago, as nearly as I can recollect.

Cross-int. 1. Before that time state the cases, if you can, where your opinion had been asked as to the genuineness of signatures, where the question of tracing was involved.

Ans. I cannot specify the cases, because I made no particular note of them at the time, but I have been consulted on such cases.

Cross-int. 2. When and where, and by whom?

Ans. When I was at 43 Niles' block, by lawyers whose names I don't recall now. I cannot answer more particularly.

(This in answer to the question of the examiner whether he could answer more particularly.)

Cross-int. 3. Remember and state, if you can, what opinion you expressed in any one of those cases.

Ans. In one particular case which, if I remember rightly, was tried at Worcester, in this State, I gave as my opinion that there had been a forgery committed in tracing a signature from a ledger.

Cross-int. 4. State if that's all you can remember in regard to that case?

Ans. I remember nothing important connected therewith, other than I have stated.

Cross-int. 5. When and in what cases have you testified in court, when the question of the genuineness of handwriting was involved?

Ans. I never have testified in court in any such case.

Cross-int. 6. What papers were first shown you in connection with this case, where, and by whom?

199 Ans. Several papers were shown me, the three papers marked F. W. P., 1, F. W. P., 10, and F. W. P., 15, by Mr. Thaxter, I think, at this office.

(The examination is proceeding at the office of D. Thaxter, esq., 16 Court street, Boston.)

Cross-int. 7. Were they all that you saw during your first interview with Mr. Thaxter?

Ans. No.

Cross-int. 8. What others?

Ans. I saw this file of papers marked R. C. P., 1 to 51, and several photographs of signatures, and other signatures shown to me on the account of the similarity in their appearance.

Cross-int. 9. Have those other signatures been produced here today since you have testified?

Ans. They have not, sir.

Cross-int. 10. Did you put any mark upon the papers that you saw, I mean those other signatures, so that you could identify them if you should see them now?

Ans. I did not.

Cross-int. 11. Have you any means of stating how many they were in number?

Ans. No. I think I could remember one or two of the signatures; I mean the names.

Cross-int. 12. How long were you making the examination that you did make at that time?

Ans. An hour and a half. About an hour and a half, I should say.

Cross-int. 13. Did you make any examination after that time?

Ans. Yes.

Cross-int. 14. When, with whom, and of what?

Ans. I should say about a week after that time, with Mr. Francis Bartlett, of the same and similar papers.

Cross-int. 15. What names of signatures do you remember?

Ans. I recall Mr. Walker's name and Mr. Spear's. Mr. Walker had C. for an initial. Do not remember whether he had another, nor anything about Mr. Spear's initials. Those are the only names I can recall.

2 p. m.—Adjourned to Monday, April 22, 1867, 10 a. m.

200 MONDAY, *April* 22, 1867—10 a. m.

Parties met and examination proceeded.

Cross-int. 16. Are you a native of Boston?

Ans. No; of Portsmouth, New Hampshire.

Cross-int. 17. Have you any knowledge of the process of tracing by artists? State it if you have.

Ans. I have. There are several processes. By transparent paper and impression paper. Those are the principal methods, I believe, of tracing. Transparent paper or transparent cloth is used in this manner: By placing either of them over the object, writing, et cetera, to be traced, and marking the lines through. By impression paper, you place the object, writing, et cetera, upon the impression paper and the paper upon which the object is to be transferred beneath the impression paper, and by marking with a pencil, or some hard pointed substance, over the lines to be transferred, if skilfully done, you find the exact impression you desire.

Cross-int. 18. Is that all the knowledge you have of tracing by artists?

Ans. Those are the principal methods of tracing which I recall at present; but artists have other methods of transferring.

Cross-int. 19. How long were you engaged in your second examination of the papers in this case?

Ans. About an hour, as nearly as I can recollect.

Cross-int. 20. Point out to the examiner, if you can, the papers which you put the one upon the other, during either of these examinations. See if you can identify them as the papers you then saw.

(Question put de bene.)

Ans. No; I can't specify the particular papers, but I remember that some of the papers that I examined in that way had the signatures of Mr. Walker and Mr. Spear upon them.

Cross-int. 21. When and where were you shown the signatures referred to in the answer to the seventh direct interrogatory?

Ans. In this office, (Mr. Thaxter's office,) and each time that I made the examination of these papers.

Cross-int. 22. Are they before you now?

Ans. Some of them are.

201 Cross-int. 23. Name the writers of them.

Ans. C. A. Walker and Joseph B. Spear.

Cross-int. 24. Were you shown the Geo. C. Wilde signatures now before you?

Ans. I was.

Cross-int. 25. Were you shown the Stephen Fairbanks signatures now before you?

Ans. I was not.

Cross-int. 26. Or the F. W. Palfrey ones now before you?

Ans. I think not.

Cross-int. 27. Or the J. Q. Adams ones now before you?

Ans. No, sir; but photographs of the signatures.

Cross-int. 28. Were signatures of Sam'l W. Swett shown you?

Ans. No.

Cross-int. 29. Were you requested to select the most similar signatures of the respective bundles, or were particular couples called to your attention by Mr. Thaxter?

Ans. Various signatures from the different bundles were submitted to me for comparison.

Cross-int. 30. Do you mean a particular specimen for comparison with another particular specimen?

Ans. Particular specimens for comparison with other particular specimens.

Cross-int. 31. Please to explain.

Ans. I mean that, instead of one particular specimen being given to me for comparison with another particular specimen, there were several specimens from each bundle submitted to me for comparison.

Cross-int. 32. How many Walker ones?

Ans. I cannot state the exact number; three or four, perhaps more.

Cross-int. 33. Were you asked to compare any particular Walker specimen with any other one?

Ans. I could not specify the particular ones. (The question being repeated, he answers:) Yes, sir; yes.

Cross-int. 34. Was this before or after you examined the Sylvia Ann Howland signatures?

Ans. After.

202 Cross-int. 35. At the same interview?

Ans. At the same interview.

Cross-int. 36. Of what parentage are you, Mr. Mullin?

Ans. American.

Cross-int. 37. What pay do you get at Mr. Eaton's?

Ans. I receive no specified salary.

Cross-int. 38. How is the compensation fixed?

Ans. I teach for Mr. Eaton as an offset for the advantages which a situation in and connection with his college afford me.

Cross-int. 39. What are those advantages?

Ans. The ornamental writing, copying, and work of that description, teaching ornamental penmanship, etc., which I naturally receive as a teacher of and attaché in that institution; office room and advertisement in his circulars as a penman and teacher of those branches.

Cross-int. 40. How many pupils has Mr. Eaton at this time?

Ans. I cannot state the exact number; I should say from about one hundred and fifty to two hundred.

Cross-int. 41. What pay did you get from the New York man?

Ans. What New York man do you mean?

Cross-int. 42. Paine, I believe.

Ans. He was one of them.

Cross-int. 43. Who was the other one?

Ans. Rice. I got twenty dollars a week as salary as teacher, and all the receipts for the ornamental work, ornamental pen-work, from Mr. Rice.

Direct examination resumed:

Int. 1. By whom were you shown the papers and photographs which in your testimony you have said you saw at the times when you have stated you examined the signatures to the papers F. W. P., 1, 10, and 15?

Ans. By Mr. Thaxter and Mr. Francis Bartlett.

T. C. MULLIN.

203 *Deposition of Joseph A. Willard.*

Joseph A. Willard, of the city of Boston, aged forty-five years, clerk of the superior court, county of Suffolk, commonwealth of Massachusetts, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that the examination of the witness is made de bene esse, without waiving any objection to the testimony offered by the respondents in regard to the genuineness of the signature Sylvia Ann Howland, to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any right, are ready to proceed with the examination.) I have been connected with the office, one way and another, as clerk, assistant clerk, and so forth, for twenty-one years. I mean the office of the clerk of the superior court, county of Suffolk, and its predecessors under different names.

Int. 1. Please state whether or not you have made the subject of the genuineness of handwriting and signatures the subject of investigation and study, and, if so, to any and what extent, and for how long a period.

Ans. To the first part of the question, I answer, I have. Shortly after—a year or two, or two or three years after—I went into the clerk's office, I was struck with the difference of handwritings of lawyers, deputy sheriffs, and others of the profession,—marked beauties, and marked angularities, and I looked into it considerably for my own pleasure. What I meant by that was, if you want me to explain

that, was handsome curves and sharp—by contrast to that, sharp turns; and also to pick out the handsomest turns and curves—marks and curves, to form a good handwriting for myself, of which I thought I had the foundation at that time. There was a good deal of handsome writing at the bar then. From that I was led some to comparisons, imitations, and so forth. Ever since then, I have made it the subject of investigation and study, more or less. In three cases, where they promised not to call me as a witness, but in one they called me. I believe that is all there is to respond to the question.

Int. 2. In the three cases last referred to, what were you called upon to do?

(Objected to as immaterial.)

204 Ans. To examine quite a number of signatures which were shown me, to see if—to give my opinion as to whether certain signatures were genuine or not.

Int. 3. State in regard to the case where you say you were called as a witness, what you were a witness to.

(Objected to as immaterial.)

Ans. To the genuineness or not of the signature produced at the hearing.

Int. 4. State whether or not you were examined as an expert in handwriting, or as a witness to the signature, or signature or signatures in question.

(Objected to for form and substance, and especially as calling for immaterial testimony.)

Ans. I wasn't called as a witness because I knew the signature, but because I had pronounced it bad among a number of others shown to me.

Int. 5. State whether or not, from the investigation which you have before testified that you have made in regard to handwriting, you are or are not able to detect false or simulated from genuine signatures.

(Objected to for form, and as calling upon the witness to determine a question which belongs to the court, upon the evidence given of his qualification.)

Ans. Well, as far as falls to the lot of humanity—I think I know as much as any expert. I don't see how I can answer that question any differently.

Int. 6. Please look at papers now shown you by the examiner, marked F. W. P., 1, 10, and 15. respectively, and the papers marked R. C. P., and numbered 1 to 51, both inclusive, excepting 31, and state whether or not you have made any, and what, examination of the signature "Sylvia Ann Howland" to those papers.

Ans. I have, considerable.

Int. 7. Assuming the signature of Sylvia Ann Howland to paper marked F. W. P., 1, to be genuine, and assuming also that the signatures Sylvia Ann Howland to the said papers marked R. C. P. are genuine, please look at the signature Sylvia Ann Howland to papers F. W. P., 10, and F. W. P., 15, and state whether or not you have

arrived at any and what opinion or conclusion as to whether these last two signatures are or are not genuine.

Ans. Yes, I have. It seems to me they are genuine.

Int. 8. State whether or not in the examination of the sig-
205 natures Sylvia Ann Howland to said papers, F. W. P., 1, 10, and 15, you have superimposed or placed either, and which, of said signatures over the other, and, if so, with what result, and with what, if any, effect upon the conclusion which you gave in your last answer.

Ans. To answer the first part of the question, I have placed both 10 and 15 over 1, and if I remember right, 15 doesn't come, won't cover so near as many other signatures I have seen—10 covers better, because the ink is so heavy and black—I don't mean because in itself it's such a heavy signature, but because it's a heavier signature than No. 1. I think I stated there that they didn't cover so well as other signatures I had seen, and it didn't lead me to object to those signatures on that account, for that reason to throw them out as bad.

(Respondents object to answer of witness, as incompetent and immaterial, so far as it refers to other signatures than those of Sylvia Ann Howland.)

Int. 9. Place signature to F. W. P., No. 10, over signature to F. W. P., 1, Sylvia Ann Howland, and state whether or not you have or have not seen other signatures of other persons which cover as well as those signatures, or how otherwise.

(Objected to, so far as it relates to the signatures of other persons than Miss Howland, as incompetent and immaterial, and respondents understand the full question to relate to signatures of such other persons.)

Ans. I have placed them over. I have seen signatures cover better, considering all the surrounding circumstances. I should like to explain that a little further. [Where there was no doubt about their genuineness, I have seen signatures, both being as heavy in all respects, cover better than this.] This covers particularly well because 10 is so much heavier than 1.

(Respondents object to bracketed portion of answer, because it refers to other signatures than those of Sylvia Ann Howland, and because it is not in terms confined to any signatures produced and put in the case.)

Int. 10. State whether or not you have made any and what examination of the signatures Sylvia Ann Howland to papers F. W. P., 1, 10, and 15, to see whether there is any and what evidence that either of the signatures to 10 or 15 was or was not, in your judgment, made by tracing over said signature, to No. 1; and what result, if any, you have arrived at.

(Objected to for form, and because it does not appear that the
206 witness is qualified to testify as an expert as to tracing, and because an opinion is asked upon that subject.)

Ans. I have made such examination, and so far as No. 15 is con-

cerned, it seems to me out of the question—impossible. And as to No. 10, I say simply that I don't think it was.

Int. 11. Will you please state whether there are any and what indications in the making of any of the letters of either of said signatures which in any and what way aid you in arriving at the conclusion which you have last stated.

(Objected to as above.)

Ans. There was one particular mark which struck me, on examining these signatures, irrespective of the genuine signature, that led me to the conclusion that they were not traced. It appears more striking in 10 because the signature is heavy, and of course the marks correspond. It was the sharp, clear cut, well-defined junction of the end of the w and the commencement of the l in Howland, which couldn't be done by a trace. It can only be done by a hand that has that particular motion of commencing there and striking off clear. It is in the genuine. [I will stop there and go in a different direction.] (The bracketed portion altered on the demand, by counsel for respondents, for the record of the imperfect sentence, "It is in the genuine.") I discovered it first in 10 and 15, without having my attention called to it at all, and then found it in other admitted signatures.

(At the close of the recording of this answer, the witness asks to see it, as written. Having done so, he states that the examiner was in error in recording the words "It is in the genuine;" that he thinks he said "In the genuine," and was going on from there when he stopped. He desires the correction so made.)

Cross-examination:

I have acted as clerk of the superior court since 1865, in May. As assistant clerk of the superior court from July, 1859, to that time. As assistant clerk of the superior court of the county of Suffolk from the autumn of 1855 till the establishment of the superior court, and as assistant in the office of the clerk of the court of common pleas, from the spring of 1846 to the autumn of 1855. These courts are entirely civil—for the transaction of civil business, that is; I don't think frequent would be the term to be used of the occurrence
207 of questions of the genuineness of signatures, but common. Many lawyers that practise in the supreme court practise in the superior court, and many that practise in the superior court do not practise in the supreme court. I have quite a large acquaintance among the members of the bar of the county of Suffolk. I was called as a witness on a question of the genuineness of a signature in a case before a referee; I should say it was about a year. Time goes so I can't tell distinctly. I don't know what the case was about. I was shown a number of signatures and asked to look them over. I looked them over, and threw one out as a forgery. Counsel promised not to call me as a witness, but did. Seems to me there were some six or eight signatures shown to me, in the whole. My recollection is clear; there were as many as that. Seems to me the name was Howe. I don't remember what was the first name. The signatures,

or what purported to be such, were to notes, orders, and receipts. When they were first shown to me, they were thrown down on my desk, with "Mr. Willard, please to look at those signatures." I think I was half an hour looking at them. I threw one of them out as ungenuine. I don't recollect now what that was. I know nothing as to the end of the case. I have not had my attention called to the matter since I testified before the referee. Mr. Hillard was the referee—George S. Hillard. That's the only time I have testified, because I have been particular—("No matter about the reason," counsel for respondents say, and the witness stops.) This referee case was one of the three cases I mentioned, where my judgment had been asked. In the other two cases, where I was not called as a witness—they were both cases in court, and both on promissory notes—I told the parties I wouldn't look at them nor say a word about them, unless they promised not to call me into court. My position was such I wouldn't be called into court to take sides. They then said they should like the benefit of my judgment.

Cross-int. 1. Excepting those cases, has there been any case in which your judgment has been consulted and your opinion asked? If so, state it.

Ans. There have been other cases where I have talked with parties as to signatures. I mention these as cases where I have been consulted. (After the question has been repeated by request of
208 counsel for respondents, witness says:) Well, the point is very narrow—let's see, I'll say this: Not consulted so deeply as in these three.

Cross-int. 2. Please repeat the question. (The examiner does so.)

Ans. I couldn't say a case. I don't mean to say by that that I haven't talked with gentlemen of the bar about the genuineness of other signatures, but these three cases I speak of par eminence as being cases that there was quite a contest about, and parties wanted me to examine thoroughly.

Cross-int. 3. Can you now name any case or occasion or signature where you judgment has been asked for, except those three?

Ans. I can't name any, but I know of a number.

Recess—12.50 to 2.

Cross-int. 4. In the case to which you have referred, what was the ground of your judgment? I mean the reference case.

Ans. I can't remember. It was some time ago, and it has passed out of my mind.

Cross-int. 5. Can you recollect the grounds of your opinion in the other two cases? What were they?

Ans. I cannot, excepting they were on comparisons. That answers the first part. One was a case brought by Loring and Fiske on a promissory note. I was consulted by the defendant on that in the morning. In the afternoon the plaintiff brought me in the same note. I told him I had given my opinion in the morning. The next day he became nonsuit. The other was a case brought by Albion K. Parris Joy against one Dr. Prescott. I was consulted by the defendant's

counsel, gave them my opinion; the case was tried last term, and the jury failed to agree.

(Answer objected to as irresponsive.)

Cross-int. 6. Please put the question again.

Ans. I could not say what were the grounds of my opinion.

(This after counsel for respondents had stated that the close of cross-interrogatory 5 referred to the grounds of the opinion of the witness.)

Cross-int. 7. No question of tracing was made in either of those cases, was there?

Ans. No, sir.

209 Cross-int. 8. Won't you describe the process of tracing, as followed by artists?

(Objected to as immaterial.)

Ans. I know nothing about it whatever.

Cross-int. 9. How do you know that No. 15 could not be traced from No. 1?

Ans. I don't see any marks.

Cross-int. 10. The question does not refer to the fact, but to the possibility. Your answer was that it wasn't possible that one should be traced from the other.

Ans. Is there any question there for me to answer? (The examiner reads cross-interrogatory 9. The witness says:) I have answered it once. I thought No. 10 cross was a mere remark of counsel. There was no question in it.

Cross-int. 11. What do you mean by marks of tracing?

Ans. I mean marks that look like patching.

Cross-int. 12. Is that all you mean?

Ans. No, sir.

Cross-int. 13. Well, state what you do mean, then.

Ans. Besides the marks of patching, that the signature besides that should perfectly correspond with the other in all its marks—the same shade in all respects.

Cross-int. 14. Entire correspondence in the copy would depend upon the skill of the artist, wouldn't it, Mr. Willard?

Ans. I shouldn't think so in all cases, if the term trace, familiarly used, as I understand it, is to put a paper over the other, and follow the lines. Then you get the dimensions and form. Then it may be shaded afterwards; but if I practise on a person's signature from my hand, so as to write it off, I don't call that tracing.

Cross-int. 15. The exactness with which the form and dimensions were taken would depend something on the skill of the hand tracing, the correctness of the eye, the firmness with which the one paper was held over the other, the condition of the party tracing, whether self-possessed or nervous, would it not?

Ans. That assumes that it's traced, to begin with, and I don't think, aside from that, from the assumption of the question—take it out of that, take it out of the assumption, and the party

210 had arrived at pretty correct state of imitation, after practice. I suppose, under ordinary circumstances, it would be

the same, but under different influences, of course, it might depend something on those influences—sober or not, anxious or not, or something of that sort. I think I could get the dimensions of a person's signature by practice. I could without measuring. I once wrote J. Wingate Thornton's name on the docket, and he thought it was his, and I never traced it.

Cross-int. 16. As the question called for your opinion how far the correctness of a copy made by tracing would depend upon the circumstances therein given, and did not refer to any particular act of any party, what are we to understand by your answer that that is the assumption of the question?

Ans. I understood that question to assume that this act done was a tracing act. That's what I mean to say, that I understood it. And I wanted to keep it seperate from an imitation, an act of imitating; that's all I meant.

Cross-int. 17. Is that all the answer you desire to give to that question and the preceding one?

Ans. I don't understand that it calls for any more answer. If there is any more wanted, you can put the question and I will answer it.

Cross-int. 18. Are we to understand that the evidence of the tracing, in your judgment, is to be found only in the perfection of the copy?

Ans. The perfections and imperfections.

Cross-int. 19. What do you mean by imperfections?

Ans. It is almost indescribable in words, but it is apparent to the eye.

Cross-int. 20. Are we to understand that the evidence of tracing is to be found in what you call the imperfections?

Ans. Perhaps not the evidence of mere tracing, but the finishing up of that commenced.

Cross-int. 21. Well, Mr. Willard, wouldn't you look for the evidence of tracing in the general mechanical structure, the spacing between the words, or, it might be, the syllables of the words,—the uniformity of departures from a base line if there were departures, rather than in nicety of imitation of letters and strokes of letters?

Ans. I should look for both, sir

211 Cross-int. 22. Well, that would depend somewhat upon the skill of the copyist, would it not?

Ans. Why, yes, sir. The first thing I do when I look at a signature is to find, of course, one admitted. And then, if I am not informed, I have to study up the handwriting from as many as I can. It takes a great deal of time. (After objection from counsel for respondents that witness is not answering responsively, and discussion between counsel of his right so to interrupt, the witness says: Please to repeat the question. The examiner does so.) I won't make any further answer now.

Cross-int. 23. Are we to understand that you would not find the evidence of tracing in the copy of a signature, or any signature, be-

cause it was unskilfully or bunglingly done, if it had the characteristics named in the question previously put to you?

Ans. I don't understand the question.

Cross-int. 24. Might there not be structural and mechanical resemblances, such as were referred to in the previous question, which would lead you to the conclusion that it was traced, although there may be no nice conformity in the strokes or shading of the letters?

Ans. Yes, sir; because it might be a mere trace, and nothing else, of exact dimension, but a mere line—so apparent that it would be useless.

Cross-int. 25. Although you say you are not accustomed to the methods of tracing usually resorted to by artists, I will venture to ask you whether the accuracy of tracing would depend upon the firmness with which the paper superimposed upon the paper to be copied was attached to or held upon the lower paper.

Ans. I should think so, undoubtedly, and upon the closeness of adhesion.

Cross-int. 26. Movements of the paper superimposed might result in departures from the original, might they not?

Ans. I should certainly think so.

Cross-int. 27. None the less a tracing on that account, would it be?

Ans. I should think not.

Cross-int. 28. Well, to come back to the question, what do you mean by saying that 15 could not be traced from No. 1? Do you mean anything more than that it is not well done?

Ans. I mean that I don't see how it can be done, as it stands now. If you move one word from the other, even half a letter, the
212 whole thing is disarranged. I have tried it in every way—and destroys the tout ensemble.

Cross-int. 29. Did you ever do any tracing yourself?

Ans. Yes, sir—not on signatures.

Cross-int. 30. Without your having done any tracing yourself on signatures, and not having any knowledge of the methods by which tracing is done by art and artists, on what do you base your skill as an expert on a question of tracing?

Ans. First, I haven't assumed that I have any skill particularly. I don't think I ever professed to be a skilful expert. Secondly, from a general knowledge of handwriting, experiments in it, imitating signatures, seeing others imitate, examining different characters of chirography, signatures of different men written at different times, conferences and discussions with acknowledged experts, and a study of writing for the last eighteen years.

Cross-int. 31. Anything further?

Ans. Relative to what?

Cross-int. 32. The question last asked.

Ans. Not that I think of now.

Cross-int. 33. These last enumerated constitute, then, the qualifications on which you expressed an opinion, on your examination in chief, as an expert in tracing, do they?

Ans. Well, perhaps on that I should mention that I have examined notes that were known to be traced, or, at least, that were in evidence that they were traced.

Cross-int. 34. Familiar as you have been with courts, you understood, did you not, that the questions put to you by plaintiff's counsel, as to tracing, were referred to your supposed skill and experience as an expert on that subject?

Ans. Why, no; I supposed it was general. No, sir.

Cross-int. 35. While you claimed, then, in your answers to the questions put to you by the plaintiff, to have been skilled in matters of handwriting, you did not mean to claim to have had any particular experience or knowledge in the matter of tracing?

Ans. No, sir.

(At this point the counsel for the defendants state to the magistrate that, in order to cross-examine fairly and justly the present
213 witness, and also the witness Lowell, whose examination is now under adjournment, they need two or three hours for careful examination, in the magistrate's presence or elsewhere, of the book of photographs produced by the plaintiff, and upon which the said Lowell has been examined by the plaintiff, and having now, in the presence of the examiner, applied to plaintiff's counsel to arrange this by consent, and the said plaintiff's counsel having wholly refused to assent to the defendant's counsel having such opportunity for examination, the defendants now request the examiner to take such order in the premises as shall afford defendants adequate opportunity for such examination, before requiring the cross-examination of the present witness, or of said Lowell, or any other witness, relating to exhibits and comparison of handwritings, to proceed to completion; and request the examiner to certify what action he takes upon this motion, in order that objection may be made to the evidence taken without such opportunity given defendants. The master rules, that the present witness not having been interrogated as to the contents of any book, or any part of the contents of any book, no case seems to him to have at present arisen in which the counsel for respondents can ask, as matter of right, for leave to examine, or time to examine, said book, or any part thereof, and that as a matter of discretion, he sees no present occasion to order that such request be granted.)

Cross-int. 36. You speak of having seen some signatures where there was some evidence produced to the court that they had been traced. What signatures were those? Whose were they?

Ans. Belknap notes, in the Miller case.

Cross-int. 37. Will you look at these signatures, 10 and 1, F. W. P., and look at the connecting stroke between the w and the l of which you have testified, and state what there is peculiar in this connecting stroke in 10, that could not be done by tracing? And state, also, whether, seen through a glass, it has a rough or even edge.

Ans. The edge that I am speaking of, in 10, is remarkable. It's clean, well cut. (After recording "It's clean," the magistrate said, Did you say sharp-cut? Witness says:) I didn't say so; you may

say so if you please. It is sharp-cut. I should like to answer a little further. (This last sentence after an interval, in which examiner was recording as above.) It is the same in No. 1, and is about the only clear, sharp-cut, well-defined angle in the signature. I should explain what I mean by sharp-cut. I could explain better by
214 illustrating, but I can't get the illustration on the paper. I mean a clean mark, well turned, where all the edges are perfect.

4.30, p. m.—Examination of Mr. Willard adjourned till time to be, gureed on.

No examination on Friday, April 19, (Good Friday,) by consent.

The examination of witnesses on behalf of plaintiff adjourned to 11, a. m., on Saturday, April 19, 1867, instead of 9.30, by consent, to give counsel for respondents an opportunity to examine book—R. vs. M., F. W. P.

Monday, April 22, 1867, 11.45 a. m.—Examination of this witness proceeds, after deposition to this point has been read to him, in presence of counsel for both parties, as follows:

Cross-int. 38. Have you talked about this matter with anybody, before testifying?

Ans. Well, I say no. But I want to qualify it by saying that I told Mr. Thaxter what I thought; that's all. I didn't talk about the facts. I didn't know anything about the facts. When my attention was first called to it by Mr. Thaxter, I gave him my theory of handwriting, and of the signatures; that's all.

Cross-int. 39. Is that all?

Ans. Now you call my attention to it, I did talk with Mr. Olney, who is counsel for the other side, or with counsel for the other side; that's all I recollect. Last Saturday morning—no, I recollect, it was a week ago last Saturday morning.

Cross-int. 40. You don't know, do you, that Mr. Olney is counsel in this case?

Ans. No.

Cross-int. 41. Not referring to any conversation with Mr. Olney, I repeat the question before put to you, Is that all?

Ans. I can't think of anything else which you would call conversations—talking about the case. Judge Lord and I spoke per-
215 haps half a minute about it the morning I came in here—I didn't call that conversation. That's all I recollect.

Cross-int. 42. When were you first spoken to by the counsel for the plaintiff on this subject?

Ans. One of the counsel asked me a question which I didn't know related to this subject, but it now appears that it did. I should say some questions, instead of a question. I should think some time during the last October term. That was the first time.

Cross-int. 43. Did you get somebody to write some signatures?

Ans. Yes.

Cross-int. 44. Was that at the request of the counsel for the plaintiff, or of your own motion?

Ans. I can't remember, but probably at the request of plaintiff's counsel—or counsel. I don't know about plaintiff or defendant her—which is which.

Cross-int. 45. Supposing that Messrs. Bartlett and Thaxter are counsel for plaintiff, was it at the request of counsel for plaintiff?

Ans. Yes.

Cross-int. 46. Did you get fifty of them?

Ans. I can't say that I got exactly fifty—I got as many as that.

Cross-int 47. Did you request the party to write them as near alike as he possibly could?

Ans. No, sir; nothing of the kind.

Cross-int. 48. Do you know Mr. Joseph B. Spear?

Ans. Well, I haven't much acquaintance with him—no, sir. He wrote me a most astonishing letter once, asking me to lend him five dollars, and I sent him the five dollars and gave it to him. I have seen him about the state house as the governor's messenger. I shouldn't say I had any acquaintance with him.

Cross-int. 49. Is that all you know of Mr. Spear?

Ans. Yes, sir.

Cross-int. 50. The signatures you procured to be made, you have since destroyed, have you not?

Ans. They were destroyed in an hour after I received them, in the presence of the party who gave them, by me.

Cross-int. 51. Do you happen to be able to fix the date when those signatures were procured? Give it as near as you can.

216 Ans. I don't see how I can. The October term commenced the first Tuesday of October and lasted till the eleventh of December, and I think it was between those dates.

Cross-int. 52. If he was paid for writing them, perhaps you can fix it by the date of the payment, can you not?

(Objected to as assuming a fact not proved.)

Ans. I can't fix the date—I don't quite understand the question.

Cross-int. 53. Mr. Willard, have you ever expressed an opinion, or any views, in relation to these signatures, which differed from or were modifications of the views which you have now expressed? I refer to signatures to papers F. W. P., 1, 10, and 15.

Ans. Never.

Cross-int. 54. Never expressed any doubt about the signatures?

Ans. I never expressed any.

Cross-int. 55. You would be surprised if you learned that a gentleman had understood you as expressing any modification of these views, would you not?

Ans. Very much.

Cross-int. 56 You got those fifty signatures made for the purpose of showing that signatures could be made one to cover another, did you not?

Ans. No, sir; not to see if they could be made, to see if they would. I should like to give my reasons for saying so, too.

Cross-int. 57. Try and think what other persons you have talked with about the matter of these signatures.

Ans. I can't. If you will name anybody and refresh my recollection, I won't deny it.

Cross-int. 58. Are you confident you haven't talked with any person?

Ans. I have said twice that I didn't remember.

Cross-int. 59. Please repeat the question. (The magistrate does so.)

Ans. I have said before that I had, with any person. (Magistrate reads cross-interrogatory 57, answer, and cross-interrogatory 58.) I feel quite so.

Recess—1 p. m. to 2 p. m.

217 Direct examination resumed:

Int. 1. Please state whether, in the answers you have made to cross-interrogatory 57, and the cross-interrogatories following, you do or do not mean to say that you have talked with persons about the matter of these signatures, other than the persons whose names you have heretofore given in this deposition.

Ans. Before I commenced giving my testimony, I spoke to no one about them, or in any matter connected with them. Since giving my testimony, Judge Lord and Mr. Olney are the only persons I remember, besides the counsel.

Int. 2. State in what kinds of handwriting or signatures, if any, you would or would not expect to find writings, or signatures of the same person, when superimposed, which would cover as said signatures to said papers F. W. P., 10 and 15, cover signature to F. W. P., 1.

(Objected to for substance, and because the witness has not shown himself qualified to be an expert.)

Ans. Those persons who sit down and have not much of any motion except of the fingers and thumb.

Int. 3. State whether or not, in making the examination of the signatures which you say you have examined in this case, you have, or have not, used any and what glass or lens.

Ans. I have used my own, which is a very excellent watchmaker's lass.

Int. 4. I have understood you to state, in cross-examination, that questions in regard to the genuineness of signatures were tried in the court where you are and have been clerk and assistant clerk, and that although the word "frequent" would not be the term, yet the word "common" would be, in regard to the number of trials in which such questions were raised. Will you please state where such questions have been raised in said court, whether you have or have not made any and what examination of the signatures in question, and how frequently, with reference to the number of cases?

(Objected to as leading in form, and as re-examination upon matter opened by plaintiffs and not by respondents.)

Ans. There have been a great many cases of disputed sig-
218 natures tried there, and in nearly all of them—I don't know as I know of an exception—where one of the counsel has not talked to me more or less about the signatures. (Answer objected to as irresponsive.) In almost every case, perhaps I might say every case. I wouldn't say, beyond dispute, every case.

Int. 5. What do you mean by the last part of your answer, as to the examination you have yourself made? Do you or do you not mean to say that you have made such examination to the extent the answer refers to?

Ans. I meant so to say.

Int. 6. In referring to the case where you testified before a referee, you say, in cross-examination, "Mr. Hillard was the referee—George S. Hillard. That's the only time I have testified, because I have been particular," when you were interrupted. Please state the reason which you then intended to give, when you were interrupted.

(Objected to as immaterial.)

Ans. I made it a sine qua non with parties that I should not be called, because I thought it was improper in my situation.

Int. 7. Why improper?

(Objected to as before.)

Ans. I thought, situated as I am with regard to parties and attorneys, I should have no thoughts or feelings with regard to one side or the other if I could help it.

Int. 8. Whether or not your situation as clerk, or assistant clerk, made your relations to the juries in your court in any and what way such as to make it a question of propriety, in your judgment, as to your appearing before them as a witness in matters of opinion?

(Objected to for form and substance, and as re-examination upon matters not opened by respondents.)

Ans. Yes, sir; I have given that, also, as a cause why I did not wish to be called, except as to matters within my special knowledge.

Int. 9. You are asked in the forty-third cross-interrogatory whether you did not get somebody to write some signatures. State to whom you refer in your answer.

(Objected to as immaterial.)

Ans. Mr. James Boyle.

Int. 10. Who is Mr. Boyle, and what is his connection with your court and with the law library?

219 Ans. He is deputy sheriff in the superior court, and librarian of the Social Law Library.

Int. 11. In answer to the fifty-sixth cross-question you say you would like to give your reasons for saying so. Please, after having the question and answer read to you, state what reasons you desired to give.

(Objected to for form and substance, and because the answer given on cross-examination was a full answer to the question put. Question thereupon withdrawn and the following put:)

Int. 12. State the circumstances under which you obtained the signatures of Mr. Boyle, as you have stated.

(Objected to as immaterial.)

Ans. Mr. Bartlett applied to me to ask me for a number of my signatures, being struck with their similarity. I told him that although they had that general appearance, they were very dissimilar; that there were two modes of writing, and it was impossible, the way I wrote, to get two signatures alike, if that was his object. But that I knew persons who wrote the other way, and so methodically, that I had no doubt their signatures would be very similar. Then he asked me if I would get some signatures from Mr. Boyle. I got the signatures, and experimented with them. I also told Mr. Bartlett of another gentleman whose signature came under the same inquiry.

(All the conversation between witness and Mr. Bartlett is objected to as irresponsive to the question, immaterial, and incompetent.)

Int. 13. State the circumstances under which, and why, Mr. Boyle's signatures were destroyed, as you have stated.

(Objected to for substance.)

Ans. I could only get them on a promise to Mr. Boyle to restore them to him before the adjournment of the court. He counted them, and I returned them to him.

Int. 14. Who destroyed them?

Ans. I can't say whether he or I destroyed them; but my remembrance is that they were destroyed between us. What I meant by returning them to him was this: They had been cut apart with scissors, and he counted them over with me, to see whether they were all there.

Int. 15. Whether or not you ever made any application to Mr. Joseph B. Spear, or to any person other than Mr. Boyle, to write or furnish you with signatures?

(Objected to as immaterial.)

Ans. Never.

220 Int. 16. Whether or not you paid Mr. Boyle anything for writing the signatures referred to—you or any one else, to your knowledge; and was anything, and what, said to him, to your knowledge, about compensation?

(Objected to as immaterial, and as re-examination upon a matter not opened by respondents.)

Ans. I never paid Mr. Boyle anything for myself, or for any one else, nor said anything to him about compensation, nor ever paid anybody for any signatures, nor ever said anything to anybody about compensation. And no one else, to my knowledge, ever paid anybody anything in reference to those signatures.

Int. 17. Which Mr. Bartlett do you refer to in your answer to the twelfth interrogatory of direct examination resumed?

(Counsel for respondents desire it noted that this question is put after Mr. Sidney Bartlett has come into the room, and stated in the presence of the witness that it was not he.)

Ans. Mr. Francis Bartlett.

Cross-examination resumed:

Cross-int. 1. What magnifying power has your glass?

Ans. I don't know. I should say, to guess, three times.

Cross-int. 2. Were these signatures of Mr. Boyle written by him and examined by you in court.

Ans. Yes.

Cross-int. 3. You promised to return these signatures to Mr. Boyle, as I understand you. Why were they counted?

Ans. Mr. Boyle is a very particular man, and a very sensitive man, and if one of them had been lost, I should have felt very badly, and Mr. Boyle wouldn't have slept for a week. So we counted them and recounted them, as I have heretofore stated.

Cross-int. 4. Your intimate relations with counsel prevented you from testifying as to the result which you reached in the examination of papers, but did not prevent you from examining the papers and giving an opinion. Is that so?

Ans. That's so; but the other side knew nothing of it.

Cross-int. 5. If you examined papers, and reached a decided opinion that they were not genuine, what, if anything, had the withholding of that opinion to do with the justice of the case?

221 Ans. I don't know as it had anything to do with it. I never gave it another thought after that.

Cross-int. 6. If you examined a paper, the genuineness of which had been attacked, and the party charged with forging or simulating the same, and reached, as you say you are able to do, as far as the frailty of humanity will permit, a decided opinion that the signature was genuine, what had the withholding of that opinion to do with the justice of the case?

Ans. I didn't look to see whether it affected it one way or the other, and didn't care. If a party wanted to consult with me, and get the benefit of my judgment, I was inclined to give it to him, without fear or favor, or hope of reward.

Cross-int. 7. You would feel justified, having reached such a result under such circumstances, in withholding your testimony in the cause?

Ans. Justified in not testifying.

Cross-int. 8. In maintaining this impartial relation between counsel and parties, in cases in the court of which you are clerk, how is that relation any less disturbed or impaired by examining the case and stating your opinion than by testifying in the case?

Ans. Simply this: If one party comes to me, and I give him my opinion, and there's the end of it, no feeling is created on the other side, in opposition, because they know nothing of it. It doesn't come into the court-room, and no one knows anything about it except the counsel who has consulted me. I don't see how there can be any feeling about it.

Cross-int. 9. That is to say, if I understand you, the impartial relation is maintained because the true and actual state of facts is not known?

Ans. That is one very ingenious way of putting it. I will add to that, I don't see anything improper in that course.

Cross-int. 10. Is that all the answer you wish to give to that question?

Ans. Yes.

Cross-int. 11. State any connection that occurs to you between the intimate relations enquired of by plaintiff's counsel as existing between you and the juries in your court, and your examination of and formation of an opinion as to the merits of a case pending before the jury, or otherwise.

222

Ans. I don't know exactly what is intended by the question, but I never mean to hear a case tried, to begin with. I always have some work of my own in court, to direct my attention from the case, whether I have ever heard anything about it before or not, and have always taken great care not to show any interest in a case, thinking that if I did, being so well known to jurors, it might be dangerous.

Cross-int. 12. With the views, and under the circumstances stated in your answer, it would be safest, would it not, not to examine and form and express an opinion to counsel or others, upon the material and vital point of a cause?

Ans. Perhaps so, if I didn't know myself pretty well.

Cross-int. 13. What is there in your relation to juries in your court which has anything to do with your opinion in cases?

Ans. Nothing, excepting that I suppose if I should testify, it might have some weight.

Cross-int. 14. Are you accustomed to form an opinion, and to testify to it in cases which do not arise in the court of which you are clerk?

Ans. No.

Cross-int. 15. If you were to examine, as you say you do, as an expert, and form an opinion, and testify to it on the stand in a case tried in the court of which you are clerk, do you think your appearance as a witness, and testimony, considering your relation to the court, would affect favorably or unfavorably the interests of the party for whom you were called, or do you think the jury would be incapable of seeing the impropriety of the position which you see so clearly yourself?

Ans. To the first part, I answer: I don't know—I never tried it. As for the jury, as a certain judge used to say, there's no telling what there is in the viscera of a jury. There's no telling what a jury would or would not think. Juries take such different views of things, there's no telling what they would think.

Cross-int. 16. If the party writing were afflicted with a nervous complaint, sometimes better and sometimes worse, with such differences that she sometimes could not write at all, sometimes with difficulty, sometimes with ease, would you expect uniformity or identity of signatures in such a case, or how otherwise?

223

Ans. No; you wouldn't expect uniformity; but those persons described in the interrogatory generally think they are called upon to write their signature while they are dreadfully nervous,

and so they almost always say, "Call again and I'll have it written," and so I should expect similarity.

4.30 p. m.—Adjourned to Tuesday, April 23d, 1867, at 9.30 a. m.

TUESDAY, *April 23d*, 1867—9.30 a. m.; i. e., 10.15 a. m.

Examination proceeds by the magistrate's reading his testimony, from cross-interrogatory 38, to the witness. After reading the answer to cross-interrogatory 48, the witness says: I should like to withdraw part of that answer, and state that I felt indignant at being mixed up with Mr. Spear, and that that was the reason I answered so. On hearing the answer to cross-interrogatory 55 read, the witness says: I should like to add to that—"and am satisfied that he greatly misunderstood me, because when he made a proposition, I neither assented nor denied." When I say "made a proposition," I mean "stated an opinion"—that is better.

JOS. A. WILLARD.

224 *Deposition of Charles French.*

Charles French, of the city of Boston, aged forty years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that the examination is to be made de bene esse, without waiving any objection to the testimony offered by the respondents, in regard to the genuiness of the signature "Sylvia Ann Howland," to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

I am a teacher of book-keeping, penmanship, and so forth, and have been so for about sixteen years, in Boston. The name of my establishment is French's Commercial and Nautical College. I have now about a hundred students. It frequently averages higher than that. Some years it goes as high as three hundred, connected with the school at one time.

Int. 1. State what branches are principally taught at your college, and whether or not the teaching of writing and penmanship form any and what part of the instruction.

Ans. The branches taught are, arithmetic, penmanship, book-keeping, navigation, engineering, drafting, and so forth. Nine-tenths of the students take instruction in penmanship—at least nine-tenths of them. By far the greater part.

Int. 2. Please state whether or not you have made the subject of handwriting and signatures, and of the genuineness of handwriting and signatures, a matter of investigation and study, and, if so, to what extent and for how long a period.

Ans. I have done so, to a great extent, for some thirteen to sixteen years, I should say.

Int. 3. State whether or not, during that time, you have been employed as an expert to give your opinion as to the genuineness or falsity of signatures in any and how many cases, in or out of court.

Ans. I have, in a large number of cases, both in and out of court.

Int. 4. State whether or not, from the experience which you have testified to, you are or are not able to detect false or simulated from genuine signatures.

(Objected to for form, and as calling upon the witness to
225 determine a question which belongs to the court, upon the evidence given of his qualification.)

Ans. I consider, from my experience, that my opinion would be a pretty correct one. I have had direct evidence, in many cases, that my opinion was correct.

Int. 5. Please look at papers now shown you by the examiner, marked F. W. P., 1, 10, and 15, respectively, and the papers marked R. C. P., and numbered from 1 to 51, except 31, and state whether or not you have made any and what examination, and with any and what care, of the signature "Sylvia Ann Howland" to those papers.

Ans. I have examined them several times with a good deal of care.

Int. 5. Assuming the signature "Sylvia Ann Howland" to paper F. W. P., 1., to be genuine, and assuming, also, that the signatures "Sylvia Ann Howland" to the said papers marked R. C. P. are genuine, please look at the signature "Sylvia Ann Howland" to said papers F. W. P., 10, and F. W. P., 15, and state whether or not you have arrived at any and what opinion or conclusion as to whether these last two signatures are or are not genuine.

(Objected to, on the ground that the witness has not qualified himself to testify as an expert.)

Ans. I have examined them, and my opinion is that they are genuine signatures.

Int. 7. State whether or not in the examination of the signatures "Sylvia Ann Howland" to said papers F. W. P., 1, 10, and 15, you have superimposed or placed either and which of said signatures over the other, and, if so, with what result, and with what, if any, effect upon the conclusion which you gave in your last answer.

(Objected to for form and substance.)

Ans. I have placed them over each other, No. 1 over each of the others, severally, and each of the others, respectively, over No. 1, and I find no cause to change my opinion.

Int. 8. Please state whether in placing the signature "Sylvia Ann Howland" to paper F. W. P., 10, over the same signature in F. W. P., 1, and in placing the same signature in F. W. P., 15, over the same signature in F. W. P., 1, you find anything, and if so what, in the manner in which the upper signature, thus placed, covers the under, which indicates that the upper signature was or was
226 not written by the same hand that wrote the signature to F. W. P., 1.

(Objected to as leading in form.)

Ans. I find matter which indicates to me that they were written by the same hand. In the first place, the general appearance of the writing, and formation of the letters, and spacing, I find that in each of the signatures there are similar breaks in the writing; that the tendency of the signatures to run up indicates to me also that they

were written by the same party. I don't believe it possible for any other person to have written the signatures to F. W. P., No. 10, and F. W. P., No. 15, other than the one who wrote F. W. P., No. 1.

Int. 9. State whether or not, in superimposing the signatures as indicated in the last question, you noticed any and what indications tending to show that the signatures to F. W. P., 10 and 15, had or had not been traced from the signature to F. W. P., 1.

(Objected to, form and substance.)

Ans. The indications to my mind are that they were not traced.

Int. 10. What indications do you refer to?

(Objected to as above.)

Ans. In the first place, the documents on which these signatures are written have each of them writing on the opposite side, which I think would be very apt to mislead any one who should attempt to trace them. In tracing, there would naturally be a good many more breaks than I can detect in either F. W. P., 10, or F. W. P., 15. The letters appear to me to be as naturally connected in F. W. P., 10, and F. W. P., 15, as in F. W. P., 1. I find also that parts of the letters in F. W. P., 15, and F. W. P., 10, do not exactly coincide with those in F. W. P., 1. The dotting of the i in Sylvia is a great way out. The a in Sylvia in F. W. P., No. 10, at the top of the first part, is looped, which is not the case in either of the others. The capital A in F. W. P., No. 10, is quite different from what it would be if traced from the A in F. W. P., No. 1. The d at the end of Howland has a natural curve at the bottom in Nos. 10 and 15, which is omitted in No. 1. The hair-line forming the up-stroke of the l in the word Sylvia in No. 1 is so fine that it would be scarcely possible to trace it through either of the other papers, and yet in both of the others it appears perfectly natural, having the same want of connection with the y preceding it as in No. 1. The capital A in No. 10 certainly could not have been traced from that in No. 1. There is in it a retouching at the top which I find is natural to the party writing this signature in other documents, but wanting in No. 1. I don't
227 think it possible for any one to have traced the word Howland in F. W. P., 15, or F. W. P., No. 10, on account of the natural connection of the letters, and from the fact that a person in tracing that signature would naturally make more breaks in the loops and in the general connection throughout the whole of it. The connection of the l and a in the word Howland, I do not believe could have been made as in No. 10 and 15, if they had been traced. In Nos. 1 and 15, the a in Howland, the first part of it, is looped at the top, and in No. 10 there is this same tendency to form that part of the letter a in a loop, but being written, as I judge, with a coarser pen and different ink—thicker ink—the loop has filled up—is covered with ink. This filling in of ink, in No. 10, does not appear to be from retouching. The first part of the d in Howland, in No. 10, is looped at the top, more than that in No. 1. I found, also, that in placing No. 1 over Nos. 10 and 15, respectively, the letters do not cover each other as they would if traced, and in placing No. 10 over No. 1, although it appears to cover, yet I do not consider that covering as any evidence

of being traced, from the fact that No. 10 being so much—written so much heavier, it is almost impossible to judge of the spacings, and size of the letters. I believe, had the signatures to Nos. 10 and 15 been traced from No. 1, the party so tracing it would have been more careful in the dotting of the i, in the formation of the capital A, and in the formation of the last part of the capital H in Howland, which, in Nos. 10 and 15, is looped at the top, leaving a very distinct space between the up and down stroke, and which loop and space, in No. 1, are entirely wanting. Each of the signatures appear to me to have been written by a person in the habit of writing with the fingers, in which case the spacings would almost necessarily be the same, as also the general size of the letters.

(Objected to by counsel for respondents, inasmuch as the question calls for indications or marks, and not for inferences or opinions, and because it is in other respects not responsive. So much of the answer is objected to as falls within the above.)

Int. 11. In your last answer, you have referred to "this signature in other documents." State what other documents you refer to.

Ans. Those on the bills of sale, admitted here as genuine signatures—the R. C. P. papers.

Int. 12. You state in that answer that "the d at the end of Howland has a natnral curve at the bottom in Nos. 10 and 15."
228 State how you find this in the signatures to the R. C. P. papers.

(Objected to for form and substance.)

Ans. I find the same curve in those papers.

Int. 13. Placing the said signature to F. W. P., 10, and to F. W. P., 15, severally, over said signature to F. W. P., 1, state whether or not you have or have not seen other signatures of other persons which cover as well as those signatures thus superimposed, or how otherwise?

(Objected to as leading in form; because, so far as it refers to the signatures of persons other than Sylvia Ann Howland, it calls for incompetent and immaterial testimony; and because the subject of the inquiry is not matter for the testimony of an expert, supposing the witness to be qualified.)

Ans. I have seen others that cover equally as well.

Int. 14. State in what kinds of handwritings or signatures, if any, you would or would not expect to find similar accuracy in covering.

(Objected to as incompetent and immaterial.)

Ans. I should expect to find similar accuracy in covering in the writing of persons writing a slow and cramped hand, using the fingers without an arm movement.

Cross-examination:

I have two teachers employed in my college at the present time, besides myself. The number depends on circumstances. That is not my usual number. My usual number is greater. I superintend all the branches there taught, and I may say teach in all of them, with the exception of drafting, phonography, and telegraphy.

Cross-int. 1. Will you state the cases in which you have testified

in court, where the question of tracing has been raised, or been involved, as to signatures?

Ans. I have testified in courts in Boston, and in court at Dedham, and I think the question has been raised in cases where I have testified in the United States court; also in a case where the evidence was taken before a commissioner, for use in court, in New Hampshire.

Cross-int. 2. I wish you to name the cases, as well as you can, and only those where tracing was the question.

Ans. A case at Dedham, of the government against a party, whose name I don't now remember, for forgery, I think, about five
229 years since. I could tell definitely on reference to my books. A case, also, in Boston, in which Mr. Somerby was one of the counsel, and in which case the signature to a promissory note was in dispute, and in which case, I believe, there were twenty-two different signatures presented to me for my opinion while on the stand, [and I have been informed that my opinion was correct in each case but one.] (Part in brackets objected to by respondents as irresponsive hearsay) There are a number of other cases in which the matter of tracing has been brought up, which I cannot now call definitely to mind, as to the parties connected with them.

4.35 p. m.—Adjourned to Wednesday, April 25, 1867, 9.30 a. m.

WEDNESDAY, *April* 24, 1867—9.30 a. m.

Cross-int. 3. After having a night to enable you to refresh your recollection, now see if you can recall the names of the cases.

Ans. I haven't attempted to recall any of the names, nor indeed thought much of the matter since. I have been up pretty much all night with a sick child, and hardly given the matter a thought. There is another case that occurs to me at this moment, in which I think the matter of tracing was one of the principal points. It was a case in which Mr. Bell, of Exeter, New Hampshire, was one of the counsel. [The matter of tracing is generally considered by experts in all matters where signatures are indispute.] (Part in brackets objected to by respondents)

Cross-int. 4. Do you wish to be understood that the cases where you have been examined as an expert in court are all properly cases where you would say the question of tracing was involved?

Ans. Not all of them; those that I have mentioned, I think the matter of tracing was the principal point.

Cross-int. 5. What one case have you mentioned by name? State it again.

Ans. The first case referred to, that at Dedham, in which case the district attorney, Mr. Harris, appeared for government, and in which I gave it as my opinion that the signature was a traced one.
230 Cross-int. 6. You referred to a case in the United States court. What was that case, and when was it?

Ans. I think I didn't state definitely that there had been one in the United States court where the matter of tracing was made the principal point. But if I remember rightly, it was brought up as matter of consideration in a case brought by the Post Office Depart-

ment, in which case Mr. Holbrook, post office agent, employed me. The time I—it's a number of years since.

Cross-int. 7. Please to state whether your answers to the fifth and sixth cross-interrogatories exhaust your recollection as to the matter enquired of, and, if not, name the cases that you can.

Ans. One other case now occurs to me, in which Mr. Ranney, of Boston, was counsel. Those are all I think of at the present moment.

Cross-int. 8. State what that case was.

Ans. The parties concerned in it, I think, resided in Brighton. I cannot recall the names. It was a matter of a signature which was in dispute, and, I think, either to a promissory note or an agreement. And I believe Mr. Somerby was on the other side—opposite counsel.

Cross-int. 9. Who employed you?

Ans. I was first retained by Mr. Somerby, [and, at the time, I made a casual examination of only three signatures.] Afterwards, I was called upon by the other counsel, and asked to examine a great number of signatures, after which examination my opinion was in Mr. Ranney's favor, and I went into court as his witness.

(Respondents object to part in brackets as irresponsive.)

Cross-int. 10. That wasn't a question of tracing, was it?

Ans. My impression is that it was; that tracing was one of the principal points in the evidence.

Cross-int. 11. The question does not call for impressions, but for memory. Have you any memory about it?

Ans. I have stated what I believe to be facts, so far as my memory now serves me. I never have had particular occasion to charge my mind with the facts in cases of the kind.

Cross-int. 12. Did you give an opinion to Mr. Somerby in that case after your first examination?

Ans. So far as the signatures presented at that time, I gave
231 a qualified opinion. He was to present other signatures to me for further examination.

Cross-int. 13. What opinion did you give Mr. Somerby about the matter of tracing?

Ans. My examination, at that time, was not over five minutes, and the matter of tracing was not mentioned, that I remember.

Cross-int. 14. What opinion did you give Mr. Ranney about tracing?

Ans. My opinion that I gave Mr. Ranney was, that it was a genuine signature, I think.

Cross-int. 15. Do you recollect whether you gave him an opinion or not?

Ans. I did give him an opinion.

Cross-int. 16. What examination did you make in that case of Mr. Ranney's, to ascertain whether the signature was traced or not?

Ans. I examined some two or three hundred other signatures.

Cross-int. 17. What else?

Ans. Nothing else.

Cross-int. 18. What knowledge have you, if any, of the process of tracing by engravers and artists?

Ans. I have seen a great deal of tracing. We use it almost daily in our business.

Cross-int. 19. Is that the best answer you can give?

Ans. I can state details, if you wish it.

Cross-int. 20. State the process which an engraver uses to trace a signature, to insure accuracy of imitation.

Ans. I am not an engraver, and therefore not fully acquainted with all their processes. So far as I have had occasion to employ an engraver, we have generally written on what is called transfer paper, from which the writing is transferred directly to the plate or stone. The matters in which I have seen tracing have been those—the matters in which I have more particularly seen tracing, have been those where tracing has been done at my own rooms, and during the past three months I have seen a great deal of it.

Cross-int. 21. You say you give the engraver your writing on what you call transfer paper. How does he transfer it?

Ans. The writing is made with ink prepared especially for
232 that purpose, called transfer ink, which, when placed on the stone or plate, and subjected to pressure, is transferred to the stone or plate.

Cross-int. 22. Is that the whole process of transfer?

Ans. As I stated before, I am not fully acquainted with the engraver's process.

Cross-int. 23. Is that the whole process, so far as you know?

Ans. So far as I know, that is one process.

Cross-int. 24. How do you do tracing?

Ans. By placing the paper or material upon which the tracing is to be made, over the matter to be traced. We then, if we wish to transfer it to another paper, make the tracing in lead-pencil. But if not wishing to transfer it again, we make the tracing directly with ink.

Cross-int. 25. How do you fasten the upper paper on the lower?

Ans. If it's a large matter, too large to be held firmly by the fingers, we fasten it with pins which come for that purpose. If a small matter, you hold it with the fingers.

Cross-int. 26. How with papers of the size of F.W. P., 1, 10, and 15? How, if you are tracing a signature on papers of that size, would you hold the paper?

Ans. If we would be correct, we should be obliged to pin it.

Cross-int. 27. You use these tracings in your business, you say. For what purposes, in your business?

Ans. We use them for copying letters; we use it for copying letters or other matter from books; also in tracing plans.

Cross-int. 28. For what purposes are the copies from books made?

Ans. For the purpos of taking some particular kind of lettering, writing, or drawing, and getting up specimens or show-cards.

Cross-int. 29. What? these show-cards that purport to be specimens of penmanship?

Ans. Yes, sir. There are very few specimens of penmanship got up in which this process is not used to some extent.

Cross-int. 30. Well, now, in making that tracing, with your experience in the matter, you expect structural identity, or what's pretty near it, don't you, as the first thing?

Ans. We do.

Cross-int. 31. As to the distances between the different
233 words of a name, and the syllabes of a word, you expect identity of spacing, or what is nearly so, don't you?

Ans. We do.

Cross-int. 32. In the curvatures of the different parts of the words or syllables, and their distances from a base line, you expect identity, don't you, or nearly so?

Ans. We do.

Cross-int. 33. What's your mode of measuring the arcs of those curvatures, if you ever do measure them, to determine their accuracy, with anything other than the eye?

Ans. We have none, except by tracing directly over them, and seeing if they exactly coincide.

Cross-int. 34. In the forms of the letters of the original and copy, you expect pretty near identity, I suppose?

Ans. That's the purpose for which we trace them, to get them as near the original as possible. I may add, we expect that result.

Cross-int. 35. When skilfully done, you find it, don't you?

Ans. We do, so far as the eye can detect.

Cross-int. 36. Sometimes the paper slips a little, and sometimes it isn't perfectly overlaid, I suppose, even when fastened?

Ans. If it slips at all, it entirely ruins the transfer.

Cross-int. 37. Does the perfection of the copy depend, among other things, upon its being perfectly overlaid and held in position?

Ans. It does—very materially so.

Cross-int. 38. When not fastened by pins, it wants a steady hand to hold it perfectly over the original, doesn't it?

Ans. It does.

Cross-int. 39. In determining the question whether one writing has been traced from another, is your opinion determined by the accuracy and finish of the copy only?

Ans. Not entirely.

Cross-int. 40. Are there not certain structural, mechanical, and I may say, mathematical resemblances or identities which would mainly determine your judgment on a question of that sort?

Ans. They, with other things, would determine it, but not by themselves.

234 Cross-int. 41. Mainly? That is the question.

Ans. They would have great weight in determining my opinion.

Cross-int. 42. Are your pupils instructed in making copies by tracing?

Ans. No; not generally.

Cross-int. 43. Sometimes?

Ans. Sometimes we have occasion to teach them that.

Cross-int. 44. Those that are trained to ornamental penmanship, for instance, are so instructed?

Ans. Yes; and those instructed in drafting are frequently so instructed.

Cross-int. 45. Well, in copies made by your pupils you find every degree of accuracy, and every degree of the want of it, don't you?

Ans. We do.

Cross-int. 46. In copies made by your pupils—in some cases of inexperienced pupils—you find some indications of nervousness in the tracings, don't you?

Ans. I don't know that we do, particularly.

Cross-int. 47. I understand you that some people write with the thumb and fingers, and some with the motion of the whole arm, do they?

Ans. They do.

Cross-int. 48. Yet, as the nerves have something to do with the thumb and fingers, as well as with the arm, I suppose the writing has something to do with the condition of the nerves?

Ans. It has.

Cross-int. 49. Then, with the spinal cord affected and varying severity of indications of disease, you would expect some differences in writing at different times, probably?

Ans. Different circumstances will frequently make a difference in the appearance of handwriting.

Cross-int. 50. Will you please answer the question?

Ans. I probably should.

Cross-int. 51. And the question of the nearness of writing, closeness of resemblance, would depend more upon the different conditions of the nervous system than upon the simple posture in which the party was placed, would it not?

235 Ans. I don't know that it would depend more so on that than on other circumstances.

Cross-int. 52. Select from exhibits marked R. C. P., and numbered 1 to 51, the documents to which you referred as proving to you that retouching, as you state, was natural to the party writing it.

Ans. R. C. P., No. 6, is one. R. C. P., No. 8, is another. R. C. P., No. 11, is another. R. C. P., No. 13, is another. Also R. C. P., 15; R. C. P., 21; R. C. P., 23; R. C. P., 24; R. C. P., 28; R. C. P., 30, R. C. P., 33; R. C. P., 36; R. C. P. 38; R. C. P., 40; R. C. P., 42; R. C. P., 44; R. C. P. 46; R. C. P., 47; R. C. P., 48; R. C. P., 51.

Cross-int. 53. And these signatures "Sylvia Ann Howland," now specified, show, do they, the same appearances which you call retouching?

Ans. They do.

Cross-int. 54. In speaking of Exhibit F. W. P., No. 10, you say "being written, as I judge, with a coarser pen and different ink." Did you examine this with care enough to say that it was written with different ink?

Ans. I think I did.

Cross-int. 55. Look at it now, and see if your opinion is confirmed.

Ans. It is.

Cross-int. 56. You have had much experience as to the different qualities of ink. Please point out the differences in the qualities of the ink between the signature to F. W. P., 10, and that to F. W. P., 1.

Ans. That to F. W. P., 10, is a thicker and blacker ink than that on No. 1.

Cross-int. 57. Is that all?

Ans. I should judge there was more acid in the ink on No. 10 than in that on No. 1.

Cross-int. 58. Please state why, Mr. French, and the confidence you have in that judgment.

Ans. My reason is on account of the appearance of the writing. I believe it is necessary to have a good deal of acid in the ink to get a good black color. The more acid there is in the ink, the more apt the pen is to corrode, and the ink will naturally grow thicker, and not flow so readily. I feel pretty positive that I am right in regard to it.

Cross-int. 59. State when and by whom you were first consulted in this case.

236 Ans. Mr. Thaxter, I think, spoke to me in regard to it some months since. It was during the summer. My impression is in June or July, I can't be positive as to that. It may be earlier than that. I have nothing to date it by.

Cross-int. 60. What, if anything, were you desired to do?

Ans. I was desired to hold myself in readiness to examine some writings in this case, and to consider myself engaged by Messrs. Thaxter and Bartlett.

Cross-int. 61. Engaged how?

Ans. In no respect other than to make examination of the writing, as I have stated.

Cross-int. 62. How long after this before you did ses any writings?

Ans. It is now about a month or six weeks since I first saw any writing. Some six to nine months, I should say, after Mr. Thaxter spoke to me. I can fix the time definitely, I think, if you wish me to, by going to my office, but I haven't it in mind now.

Cross-int. 63. What were you desired to do when the papers were shown to you, and what did you do?

Ans. I was desired to examine three signatures, in the first place: one on F. W. P., No. 1, which was stated to me was a genuine signature; one on F. W. P., No. 10, and one on F. W. P., No. 15, which were stated to be in dispute, or in question. I made an examination of those three signatures, and was afterwards shown a number of photographs of these same signatures, and of signatures of the same party annexed to other documents—what were stated to me to be such photographs. I also examined the original signatures in documents marked R. C. P., and numbered from 1 to 51—except 31. I was also shown quite a number of photographs of the signatures of

other individuals. I was asked to make a particular examination as to whether this signature in F. W. P., No. 10, and F. W. P., No. 15, were traced signatures—were traced from that in F. W. P., No. 1. I made what I considered sufficient examination, and gave it as my opinion that the signatures in F. W. P., No 10, and F. W. P., No. 15, were genuine signatures. I was asked to give my reasons for so thinking, and gave them as stated in my previous testimony.

237 Cross-int. 64. You have stated that, in putting the signatures over each other, as you have said, you found no cause to change the opinion you had given as to the genuineness of the signatures. Was that so?

Ans. Yes.

Cross-int. 65. That opinion was formed then, was it, before you placed the signatures the one over the other?

Ans. It was.

Cross-int. 66. Was it stated?

Ans. No. Not—I stated no opinion, I think, until I had made the entire examination.

Cross-int. 67. Sure about that?

Ans. I am quite positive of it.

Cross-int. 68. Gave no intimation of an opinion, did you?

Ans. I am very sure I did not, for I learned a lesson in that respect once, and have been very careful since not to do so.

Cross-int. 69. Did you ever see the plaintiff, Miss Robinson?

Ans. Not to my knowledge.

Cross-int. 70. Did you ever have any dealings with William R. Huston?

(Objected to as immaterial.)

Ans. Not that I know of. I don't remember any such person.

Cross-int. 71. Did you ever know R. L. Blackwell, or any of his signatures?

(Objected to as immaterial.)

Ans. No; not that I remember of.

Cross-int. 72. Before which judge of the United States court did you testify?

Ans. I don't remember who was on the bench at the time.

Cross-int. 73. How many years ago?

Ans. I couldn't tell unless by reference to my books. I have testified a great many times in the United States courts, but I don't recollect the exact time of that particular case.

(Answer objected to by respondents as irresponsive.)

Cross-int. 74. When was the last time you testified in the United States court in any case?

Ans. About a year since, I think.

Cross-int. 75. Before what judge?

Ans. Before a commissioner, I think, at an examination before Mr. Hallett.

238 Cross-int. 76. Repeat the previous question to the witness, if you please.

(This to the magistrate, who does so.)

Ans. I think I did.

Cross-int. 55. Look at it now, and see if your opinion is confirmed.

Ans. It is.

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Cross-int. 72. Before which judge of the United States court did you testify?

Ans. I don't remember who was on the bench at the time.

Cross-int. 73. How many years ago?

Ans. I couldn't tell unless by reference to my books. I have testified a great many times in the United States courts, but I don't recollect the exact time of that particular case.

(Answer objected to by respondents as irresponsive.)

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Ans. About a year since, I think.

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Ans. Before a commissioner, I think, at an examination before Mr. Hallett.

238 Cross-int. 76. Repeat the previous question to the witness, if you please.

(This to the magistrate, who does so.)

Ans. About a year since.

Cross-int. 77. Do you not know the difference between the United States court and a commissioner?

Ans. I am aware that the commissioner isn't a judge. This case was carried into the court immediately after.

Cross-int. 78. My question referred to judges. When was the last time you testified in the United States court before a judge?

Ans. This same case was carried up before a judge. I was there as a witness, but the witnesses were not called upon. I can't decide in my memory now. I couldn't tell the last case without reference to my books.

Cross-int. 79. Will you swear you ever testified before a judge in the United States court?

Ans. Yes.

Cross-int. 80. In the adjournment now about to take place, please refer to your books, to be able to testify in what cases and when you testified before a United States judge.

Ans. I will so far as I can; I haven't all my books that would give me all that information.

Recess—1 to 2 p. m.

THURSDAY, *April* 25, 1867—4 p. m.

Examination to this point now read to the witness, and the examination proceeds.

Cross-int. 81. Since the adjournment, with which of the counsel for plaintiff have you talked?

Ans. I have seen Mr. Thaxter and Mr. Francis Bartlett, and talked with them.

Cross-int. 82. How long have you talked with Mr. Francis Bartlett about this case, as near as you can say?

Ans. Perhaps two minutes—not over that.

Cross-int. 83. Did he show you anything, and, if so, what?

Ans. He did. Papers F. W. P., 1, 10, and 15, I think.

239 Cross-int. 84. Where?

Ans. In the adjoining room.

Cross-int. 85. What did he say to you when he called your attention to those papers?

Ans. He asked me if I had examined the body of the documents—the writing of the body of the documents.

Cross-int. 86. Proceed—state all that was said by him.

Ans. I answered him that I had not. He then stated that it was a question whether they were written by the same person who wrote the signatures, and desired me to examine them for that purpose. He also asked me to examine some, about a line of writing, I think there was there, in document F. W. P., No. 1, I think, and see whether or no it was written at the same time with the rest of the document. I examined them, and gave him an opinion in regard to them.

Cross-int. 87. After referring to your books and minutes, state before what United States judge you have ever testified.

Ans. I can't state the names of any judges of the United States court before whom I have ever testified. I believe that was not what I was asked to do, as I remember the request.

Cross-int. 88. Then you cannot state the counsel, the judge, nor the name of the case, in any case in the United States court where you have ever testified.

Ans. I can state the counsel.

Cross-int. 89. Who was the counsel, and when, and was it in the circuit court or the district court?

Ans. The exact dates I cannot give you, except in one case—that of the Post Office Department, which occurred in 1862, as near as I can judge from my books. I have appeared in the United States court when Mr. Dana has been one of the counsel, also Mr. Lothrop, also Mr. Morton. I don't remember as to the courts; I cannot specify them.

Cross-int. 90. What do you mean by "appearing?" Were you ever examined in the court by either of those gentlemen on the witness stand?

Ans. I mean that I have been on the witness stand, been sworn and given evidence, under their examination, and others.

Cross-int. 91. In the case at Dedham, where you say Mr. Harris called you, was the defendant a man or a woman?

240 Ans. A man.

Cross-int. 92. Do you esteem accurate tracing an easy and simple matter?

Ans. I do not.

Cross-int. 93. Do you esteem it a difficult matter?

Ans. I do.

Cross-int. 94. You didn't hear the testimony of Mr. Eaton on that subject, did you?

Ans. I did not.

Cross-int. 95. Referring to your answer to the tenth interrogatory in chief, you do not know, do you, whether those signatures to 10 and 15 were made before the body of the paper was written, or not, as matter of fact?

Ans. I do not.

Direct examination resumed:

Int. 1. You say, at the request of Mr. Francis Bartlett, you examined the document F. W. P., No. 1. Will you now look at it and state whether or not the words "executor of the second page of this will," the words "eleventh" and "January," are written in the same ink as the body of the instrument?

Objected to, for form, as leading.)

Ans. I think they are not.

Int. 2. Whether or not you would say they are written in the same ink as the signature "Sylvia Ann Howland?"

(Objected to as re-examination on matter not opened by respondents in cross-examination.)

Ans. That I have made no examination of.

Int. 3. Will you please examine it now?

(Objected to as before.)

Ans. I don't think they are.

Int. 4. Please state by whom you were shown the papers and photographs which you refer to in your answer to the cross-interrogatory sixty-third.

Ans. By Mr. Frank Bartlett.

CHAS. FRENCH.

241 *Deposition of William H. Eaton.*

William H. Eaton, of Cambridgeport, near Boston, aged forty-five years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that the examination of the witness is made de bene esse, without waiving any objection to the testimony offered by the respondent in regard to the genuineness of the signature "Sylvia Ann Howland" to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

I am proprietor of Eaton's Commercial College, 283 Washington street, Boston. I have generally varying from one hundred and twenty-five to one hundred and seventy-five pupils; that is, inclusive of all branches taught. Probably I have one hundred and thirty now. The special branches are commercial studies, book-keeping, and collateral studies. It is a business college; besides, we teach classical studies, navigation, surveying, engineering, and the higher mathematics; those are the special studies. I have been proprietor of such an institution for seventeen years. I have taught longer than that, teaching these branches in a more private way.

Int. 1. Whether or not is the teaching of writing to any and what extent a part of the instruction at your college?

Ans. That is one of the specialties of instruction there, and a large majority of my students take instruction in it.

Int. 2. Please state whether or not you have made the subject of handwriting and signatures, and of the genuineness of handwriting and signatures, a matter of investigation and study; and if so, to any and what extent, and for how long a period?

(Objected to for form.)

Ans. I have; it would be impossible for me to say precisely to what extent, having been called upon, from time to time, from the commencement of my business, to act as an expert.

Int. 3. How frequently have you been called upon to examine and testify as an expert as to the genuineness of signatures and handwriting?

Ans. From time to time, for seventeen years. I have never kept a memorandum.

242 Int. 4. State whether or not, from the experience which you have testified to, you are or are not able to detect false or simulated from genuine signatures?

(Objected to for form, and as calling upon the witness to determ-

ine a question which belongs to the court upon the evidence given of his qualification.)

Ans. I think I am.

Int. 5. Please look at papers now shown you by the examiner, marked F. W. P., 1, 10, and 15, respectively, and the papers marked R. C. P., and numbered 1 to 51, both inclusive, excepting 31, and state whether or not you have made any and what examination of the signature "Sylvia Ann Howland" to those papers.

Ans. I have made examination of both classes of papers.

(On the counsel for plaintiff's proceeding to put a question to the witness, as to what examination he had made, the examiner reminded him that that inquiry was contained in the question already put, and called the attention of the witness to the fact, that, though he had stated that he had made examination, he had not stated what examination. The witness thereupon said, "I do not see the bearings of that." And after counsel for respondents had requested that that be recorded, he said, "I do not understand the question well enough to answer further.")

Int. 6. State whether or not you made the examination with any and what degree of care.

(Objected to for form.)

Ans. I made the examination with great care, having the object to satisfy myself if they were genuine signatures.

Int. 7. Assuming the signature "Sylvia Ann Howland," to paper marked F. W. P., 1, to be genuine, and assuming also that the signatures "Sylvia Ann Howland" to the said papers marked R. C. P., are genuine, please look at the signature "Sylvia Ann Howland" to said papers, F. W. P., 10, and F. W. P., 15, and state whether or not you have arrived at any and what opinion or conclusion as to whether these last two signatures are or are not genuine.

(Objected to, on the ground that witness has not qualified himself to be examined as an expert.)

Ans. I am thoroughly convinced that they are genuine.

Int. 8. State whether or not in the examination of the signatures "Sylvia Ann Howland" to said papers F. W. P., 1, 10, and 15, you have superimposed or placed either and which of said signa-
243 tures over the other; and, if so, with what result, and with what, if any, effect upon the conclusion which you gave in your last answer.

(Objected to for form and substance.)

Ans. I have, and find them remarkably alike. I base my judgment upon the general appearance of the signatures in connection with the detail.

Int. 9. Please state whether, in placing the signature "Sylvia Ann Howland," to paper F. W. P., 10, over the same signature in F. W. P., 1, and in placing the same signature in F. W. P., 15, over the same signature in F. W. P., 1, you find anything, and, if so, what, in the manner in which the upper signature, thus placed, covers the under, which indicates that the upper signature could or

could not have been written by the same hand that wrote the signature to F. W. P., 1.

(Objected to as leading in form and as assuming facts which are not in evidence.)

Ans. There are slight peculiarities existing in the three that would indicate that one was not traced from the other, or — and if an attempt was made to execute one like the other, those peculiarities would not exist.

Int. 10. Placing said signature to F. W. P., 10, and to F. W. P., 15, severally, over said signature to F. W. P., 1; state whether or not you have or have not seen other signatures of other persons which cover as well as those signatures, thus superimposed, or how otherwise.

(Objected to as leading in form, because, so far as it refers to the signature of persons other than Sylvia Ann Howland, it calls for immaterial and incompetent testimony; and because the subject of the inquiry is not matter for the testimony of an expert, supposing the witness to be qualified.)

Ans. It is quite a common occurrence with me to notice that certain classes of writers repeat themselves in their signatures, among which are Mr. Spear's and Mr. Wilde's, and John Q. Adams's, as especial illustrations of that fact. And they cover, in my opinion, fully as well.

Int. 11. State under what circumstances, if any, you would expect the handwriting of a person to repeat itself, if at all, so as to cover, as said signatures to F. W. P., 10 and 15, cover said signature to F. W. P., 1, when severally superimposed.

(Objected to as leading in form and incompetent in substance.)

Ans. The circumstances of a cramped position would be liable to produce that result.

244 Int. 12. Whether or not would health, or being propped up on a lounge, render this accuracy of repetition more or less probable?

(Objected to as leading, and as simply conjectural, and as not referring to any state of facts in proof.)

Ans. A person in ill health would be likely to arrange a plan of writing which would be the same from time to time, and which would be likely to bring like results, more so than an individual writing freely from day to day, being accustomed to writing.

Int. 13. What, if any, influence would the being habitually propped up on a lounge to write signatures have?

(Objected to as above, and, so far as it has any connection with the present inquiry, as assuming a fact contrary to what is proved by the evidence of the plaintiff.)

Ans. It would act upon the party the same as a carpenter's gauge, confining them to the same class of writing.

Int. 14. State in what kinds of handwritings or signatures, if any, you would or would not expect to find accuracy in repeating or covering.

(Objected to as calling for immaterial testimony.)

Ans. You are less liable to find those repetitions among men who are extensively employed in business.

Int. 15. State why.

Ans. Signatures correspond sometimes to the feelings of the business men—the atmosphere.

Int. 16. How would this be in regard to a person who used his whole arm more or less in writing, or whose mechanical action in writing was limited to his fingers or hand, having reference to the fourteenth question?

(Objected to as before and as leading.)

Ans. A person writing with the arm motion would be more likely to write a freer hand, and would be subject to more irregularities than in writing from the thumb joint. Writing from the arm motion gives more freedom, that's the idea.

12.30 p. m.—Direct examination of this witness closes here.

Cross-examination at the request of counsel for respondents, and with the consent of counsel for plaintiff, is postponed to Wednesday, April 24, 1867, p. m.

Examination is to proceed at half past two this day with another witness.

245 WEDNESDAY, *April* 24, 1867—2 p. m.

Cross-examination:

Cross-int. 1. Does tracing form any part of the art of penmanship or of the instruction which you give to your pupils?

Ans. Personally, no. It forms no part of the art of penmanship as taught by myself. It is taught in my school by others than myself.

Cross-int. 2. To insure accuracy in copying signatures or other writing, what mode is resorted to by engravers or artists?

Ans. I can only answer for myself.

Cross-int. 3. Are not the processes of tracing used by engravers known to you?

Ans. No.

Cross-int. 4. Do you teach the art of tracing yourself?

Ans. I do not.

Cross-int. 5. Do you practise it?

Ans. I do not.

Cross-int. 6. Have you a teacher under you who teaches the art of tracing, and, if so, who is he?

Ans. I have. His name is T. C. Mullin.

Cross-int. 7. How is the art of tracing used in connection with the art of penmanship?

Ans. I am not over that department, and cannot answer.

Cross-int. 8. In view of your previous answers, that you are not acquainted with the processes of tracing used in art, that you do not practise it yourself as a part of your art, that you do not teach it or supervise the teaching of others in that department, please state whether you consider yourself an expert on that subject.

Ans. I do consider myself competent to act as an expert in regard to the genuineness of signatures.

Cross-int. 9. The witness will please observe that the question does not refer to his qualification as an expert on the general subject of the genuineness of signatures, but to the particular matter of tracing.

Ans. I think, with my present judgment, I should be able to ascertain if one signature was traced from another.

246 Cross-int. 10. What do you mean by "ascertain"? Anything more than form an opinion satisfactory to your own mind?

Ans. I meant by "ascertain" that I should feel sufficiently satisfied in my own judgment to risk large sums of money, if I were a business man, on my judgment.

Cross-int. 11. Risk large sums of money on your opinion or judgment, do you mean?

Ans. Yes.

Cross-int. 12. Even supposing that a person of equal experience and skill had reached an opposite conclusion?

Ans. Yes.

Cross-int. 13. So that if the most experienced of note-detectors had pronounced a bill to be counterfeit as to the signature of the president or cashier, you would take the bill on your own judgment, however large the amount?

Ans. I should hold to my own judgment until some collateral circumstance in connection with the signature overbore my previous opinion.

Cross-int. 14. Wouldn't those collateral circumstances be taken into consideration in forming your opinion, so far as you could ascertain them?

Ans. If of sufficient weight to change my judgment, I—yes.

Cross-int. 15. Not to change, but to form; shouldn't you consider them in forming an opinion?

Ans. If I understand the previous questions, I am supposed to form a judgment of my own beforehand, and the collaterals coming afterwards, as antagonistic to my judgment, they might have weight in changing my opinion.

Cross-int. 16. Is that the only answer you feel able or desire to give to the question?

Ans. I have answered to the sentiment of the question, to the best of my ability.

Cross-int. 17. Some people write from the arm, and some from the hand only. Is that the idea you gave us in your examination in chief?

Ans. Yes.

247 Cross-int. 18. And, whether writing with the thumb and fingers only, or with the swing of the arm added, the writing is, in either case, affected by the state of the nerves, isn't it?

Ans. It is. Less with the one method than with the other.

Cross-int. 19. How large a porportion of persons write with what

you call the thumb and fingers, and how large a proportion with the swing of the arm also?

Ans. I am not able to say. Perhaps equally divided.

Cross-int. 20. What class of persons is it in whom it is least likely that there will be uniformity of signatures?

Ans. Those who write freely, with the arm motion.

Cross-int. 21. How is it with men extensively employed in business? Did we understand you to say that they are less likely to have their signatures uniform?

Ans. They are subject to like results from like causes with other men.

Cross-int. 22. Did you say that the signatures of business men would correspond to their feelings at the time, and to the atmosphere?

Ans. Yes; if they write a free, unrestrained hand.

Cross-int. 23. Don't the feelings affect the use of the hand and arm in all men, more or less?

Ans. The feelings would be the same, the results would be different; the one being restrained, the other without restraint.

Cross-int. 24. That is, the feelings don't get down to the thumb and fingers, I suppose, so readily. Is that what you mean?

Ans. I have no answer to that question.

Cross-int. 25. What constitutes the restraint in the one case, and not in the other?

Ans. The position of the person writing, and the manner of using the pen.

Cross-int. 26. If you can make it more intelligible, please explain it.

Ans. A person writing with the paper directly in front of them, is under more or less of restraint.

Cross-int. 27. Why?

Ans. Because as the arm is on the outside of a person, the paper being in front of a person, in order to write on a line, you write under adverse circumstances.

Cross-int. 28. Do you mean to say that the writing of per-
248 sons is not materially affected by their physical condition, particularly their nervous condition, whether using the one mode or the other?

Ans. I mean to say that it affects one class more than the other. (Question being repeated, witness says:) I cannot convey my meaning better than in my answer.

Cross-int. 29. You say there is constraint when the paper is directly in front of a person, if I understand you. How is it when one is writing upon a straight line directly before him?

Ans. The tendency is to write off of that line—up and off of that line.

Cross-int. 30. What is the effect—the general effect of a ruled line—as to producing uniformity of signatures and of writing, in your judgment?

Ans. By great effort, you might be enabled to keep on the line. The question is connected, as I understand, with a previous question,

as to those who write with the paper directly before them, and I answer so with a view to that connection.

Cross-int. 31. Is that the only answer you desire to make to that question? That question was general.

Ans. It is.

Cross-int. 32. In determining the question whether a signature was traced or not, would you attach importance to the general mechanical structure of the writing, to the distances between the different words of a name and the different syllables of those words, to the arcs made by the curvatures in the writing and the respective departures from a base line, as found in the original and copy?

Ans. My judgment in regard to the question whether there was a tracing from the original in the copy, wherein I expressed an opinion that it was not traced, was based upon the fact that there was a want of exactness that there would appear were it traced.

(Answer objected to as irresponsive.)

Cross-int. 33. Please repeat the question. (To the examiner, who does so.)

Ans. My judgment, in part, would be formed by those circumstances.

Cross-int. 34. What is the relative importance to be attached to the features described in the previous question, as compared with the nice finish or shading of that which is claimed to be a copy?

249 Ans. I cannot answer.

Cross-int. 35. Whether the resemblance between the one and the other were exact or not, would depend, would it not, more or less, upon the skill of the copyist, and his mental and physical condition at the time?

Ans. I am at a loss to answer, unless you give your question in details. Whether it is to copy a nicely-tinted engraving, or to trace a signature, both being finished by a different process.

Cross-int. 36. I haven't asked you as to any matter of nice engraving or copying, inferring from your previous answers that you had no particular skill in that department. The question refers to signatures.

Ans. Understanding your question to have reference to tracing, my answer is that there will be shown an exactness not only in the relative positions of words and letters, but to the formation of those letters, under all circumstances.

(Answer objected to by respondents as irresponsive.)

Cross-int. 37. I repeat the question, cross-interrogatory thirty-five.

Ans. In answering that question, I have covered a preceding question, in connection with this, having reference to tracing in contradistinction from copying.

Cross-int. 38. Whether the resemblance between the one and the other were exact or not would depend, would it not, more or less, upon the skill of the tracer and his mental and physical condition at the time?

Ans. I think not.

Cross-int. 39. In a traced copy, if a traced copy were carelessly made, or bunglingly, might not the means of detection be as plain and the evidences of tracing as clear, as if there were the greatest perfection in finish?

Ans. A traced copy, whether skilfully or bunglingly done, will show a precision of outline sufficient to form a judgment of genuineness.

Cross-int. 40. Why precision?

Ans. Because the intention is to trace, and there are no obstacles in the way of tracing.

Cross-int. 41. How no obstacles? What do know about that, in the suppositions case given?

250 Ans. Because I judge it a simple matter to trace a signature.

Cross-int. 42. Do you mean to say that because a tracing was imperfectly executed, the means of detection and discovery might not be as clear and satisfactory as where the work was more skilfully done?

Ans. I mean to say, if it were traced, more accuracy in details would be shown than is now evident to me.

Cross-int. 43. Then it is in the great and detailed accuracy of the copy that you find only the evidences of the tracing? Is that so?

Ans. Do you have reference to the copy "Sylvia Ann Howland?"

Cross-int. 44. I have made no reference to any particular signature—I am asking you only a general question, as a matter of science or art.

Ans. It is in the accuracy of the formation of the letters that I would be most influenced.

Cross-int. 45. More so than by the general mechanical structure, the spacings, and the departures from a base line?

Ans. I should examine that feature first—next to the spacing and general formation of the words.

Cross-int. 46. How would you measure the arcs formed by the curvature of the different parts of the name, in order to compare the one with the other?

Ans. If you are speaking of the art of tracing, I should place the one above the other, having a light behind the original.

Cross-int. 47. You spoke, in your testimony in chief, of the resemblance between the supposed signatures of John Quincy Adams and Geo. C. Wilde. In forming a judgment as to the reason why that resemblance exists, do you attach any importance to the fact of their writing daily, and perhaps hourly?

Ans. I do not.

Cross-int. 48. Or to the fact, particularly applicable to the case of Mr. Wilde, that he is accustomed to sign documents formally and substantially in the same place on the page or paper?

Ans. That precision may be owing to two facts or circumstances. One, a confined position; the other, a habit for order—perhaps it might be called under that head.

Cross-int. 49. Do not persons who ordinarily write their

251 names in the same place on the paper, in the same room, at the same desk, generally in the same posture, acquire uniformity of signature?

Ans. I think they do.

Cross-int. 50. When you find the circumstances and conditions stated in the last question, and combine with them a habit of writing which is mechanical, are not those the cases in which you look for the greatest uniformity?

Ans. They are.

4.30 p. m.—Adjourned the examination of this witness to 2 p. m.; the general examination to 9.30 a. m., on Thursday, April 25th, 1867.

THURSDAY, *April 25th*, 1867—2 p. m.

Deposition to this point is now read to the witness, and the cross-examination proceeds:

Cross-int. 51. State, if you please, some four or five of the more prominent cases in which you have testified as an expert in court.

Ans. Not having kept a memorandum, I can now remember the names of but two; those are the last. The last was a divorce case, and, I think, one of the parties was named Green, before the court in East Cambridge. The other, next preceding, I think, was Dr. Mayo's, a case involving some property matter. He was a trustee, I believe.

Cross-int. 52. How did the question of handwriting arise in the divorce case?

Ans. If I remember aright, there were two documents presented to me, for me to decide upon my judgment if both documents were written by one person.

Cross-int. 53. What were the documents, letters or what?

Ans. One was a letter, I think; I don't recollect whether the other was a simple signature, or what, but, upon premeditation, think it was a bill.

Cross-int. 54. Were that and the Mayo case the only ones you recall?

Ans. The only ones I recall by name. I remember circumstances in connection with the others.

252 Cross-int. 55. Indicate, by the circumstances, such cases as you recollect.

Ans. I remember from some circumstances two cases before W. W. Rice, at Worcester. Those circumstances were simply conversational circumstances, in suits, as regarded payment.

Cross-int. 56. In what capacity was Mr. Rice sitting, if you recollect?

Ans. I have forgotten.

Cross-int. 57. Any other cases that you recollect?

Ans. I remember one case in an office on State street. I only remember the location.

Cross-int. 58. Who was holding the court in that case?

Ans. I do not remember.

Cross-int. 59. Whom was the case of Mr. Mayo before?

Ans. The superior court. I think Judge Russell.

Cross-int. 60. Any other case in which you have testified in court, and before a judge, that you recollect?

Ans. None that I can distinguish by circumstances, as an expert—testifying as an expert.

Cross-int. 61. Do you keep any memorandum of the cases in which you have testified as an expert, in any court, and before any of the judges of this State?

Ans. I do not.

Cross-int. 62. Indicate the signatures, or what purport to be the signatures of J. Q. Adams, referred to in your answer to the tenth interrogatory in chief, as covering as well as those in that question mentioned.

Ans. I identify them by my initials. They are those marked Adams—F. W. P., and numbered respectively 12, 80, 20, 83.

Cross-int. 63. Do you mean that those cover respectively as well, or how?

Ans. I mean that they do.

Cross-int. 64. That each one covers the other three as well?

Ans. Speaking from my remembrance, I should say that three covered as well, or that there was a slight variation on one, which I thought I checked. Not finding that checked one, my impression is that they all covered as well.

Cross-int. 65. Is that your opinion upon this examination now made?

Ans. It is.

253 Cross-int. 66. Had Mr. Adams a reputation for remarkable uniformity of signature?

Ans. I do not know.

Cross-int. 67. Select the signatures of Mr. Geo. C. Wilde which you now identify as meeting the requirements of your answer to the tenth interrogatory in chief.

Ans. I examined, with reference to that point, Wilde, F. W. P., 5; Wilde, F. W. P., 59; Wilde, F. W. P., 4; Wilde, F. W. P., 3. I do now identify them by the initials which I placed upon them upon examination.

Cross-int. 68. Any more chances of discrepancy or departure in the signature of Sylvia Ann Howland than in that of J. Q. Adams?

Ans. I should think not.

Cross-int. 69. That is to say, it is as easy to trace a long name as short one, and get it right?

Ans. As to correctness, yes.

Cross-int. 70. One of sixteen letters as easily as one of six?

Ans. As far as correctness, yes.

Cross-int. 71. No more chances of discrepancy in the one than in the other?

Ans. None.

Cross-int. 72. And if the signature covers the whole line, no more than if it is of six letters?

Ans. None; unless by being wearied, it being a simple operation.

Cross-int. 73. Do you feel as great a degree of confidence in your opinion on this point as on any of the others?

Ans. I do.

Cross-int. 74. State whether you feel as great a degree of confidence in your answer to the sixty-eighth cross-question, as you do in relation to any of the opinions you have expressed.

Ans. I do.

WM. H. EATON.

254 *Deposition of William W. Crapo.*

William W. Crapo, of New Bedford, Massachusetts, counsellor-at-law, aged thirty-six years, being duly sworn, testifies as follows:

I was acquainted with the late Sylvia Ann Howland. I have known her by sight ever since I was a small boy. I have been at her residence on matters of business—known her in that way since about 1860.

(Counsel for plaintiff here requests special examiner to note that the testimony of Mr. Crapo now to be taken is taken de bene esse, and that he does not mean thereby to waive his objection to the testimony heretofore taken on the part of respondents, or any part thereof. Counsel for respondents object to the limitation make by counsel for plaintiff as being made too late, and after a question had been asked of the witness and answered. Counsel for respondents propose to ask the witness whether or not he has been retained and acted as counsel in the suit in which his deposition is now sought to be taken, with a view of objecting to the competency of his testimony, if such should prove to be the fact from his answer. To which the counsel for the plaintiff objects, as being a question coming properly in cross-examination, and that the progress of the deposition ought not to be now interrupted by allowng respondents to interrogate upon any subject-matter. Counsel for respondents requests that it be noted that, this being a question concerning the competency of the witness, he claims that it may properly be put as a preliminary. The magistrate rules that the question may not be put.)

Int. 1. What matters of business led you thus to know Miss Howland? State fully.

(Objected to for substance, and as calling for incompetent and immaterial testimony.)

Ans. I was called upon quite freely to witness her signature, and take her acknowledgment to documents which she had signed.

Int. 2. Whether or not, at the earliest period at which you were thus called upon to witness the signature of Miss Howland, was she a person of sound health or an invalid? If the latter, what was supposed to be the cause of her illness, if you heard the cause assigned? What position was she in when she affixed her signatures? Describe the same, and state whether or not she at that time made her signature slowly, easily, or rapidly, or in what other manner.

255 (Objected to as leading in form, as calling for the opinion of

the witness upon a matter on which he is not yet proved to be an expert, as calling for hearsay testimony and rumor, the suppositions of others and not the knowledge of the witness, and for testimony in itself incompetent and immaterial. The foregoing objection being made, plaintiff's counsel puts the question anew, striking out the words, "If the latter, what was supposed to be the cause of her illness, if you had heard the cause assigned?" Counsel for respondents object to question amended as above.)

Ans. She was at that time an invalid. When she affixed her signatures, she was lying upon a lounge, supported by pillows or cushions, with her feet upon the lounge. A board or atlas was placed in her lap. The attendant handed her a pen, and she wrote her name with some difficulty, and slowly—very slowly.

Int. 3. Whether or not at any time when you witnessed her signature, was she at the time of writing the same in any other and, if so, what position?

(Objected to, form and substance.)

Ans. Never in any other position when I saw her sign her name.

Int. 4. Whether or not, at any time, the difficulty you have mentioned, of making her signature, increased or diminished? If you say either was true, say which, and describe the mode in which she signed her name during the last two years of her life, if you know.

(Objected to, form and substance.)

Ans. It increased—the difficulty increased. This difficulty increased gradually, from the first to the last interview—from the first to the last time that I saw her sign her name. At first, and for some time after I first went there to witness her signature, she held the pen unassisted. Afterwards her attendant assisted her in forming the letters of her name by taking hold of the pen with her, and by reminding her what letter was to be made next. The latter mode was pursued, as near as I can remember, for say a year and a half, or two years before her death, with the exception of one or two of the last times I saw her, when she made her mark, being unable to write her name even with assistance.

Int. 5. Will you look at the paper now shown you, marked F. W. P., 19, and state whether or no you witnessed the signature of Miss Howland to that paper; and, if so, when?

(Objected to, substance.)

Ans. I did, at the time of its date.

256 Int. 6. Whether or not, prior to that time, had her signatures, according to your recollection, been better or worse, or as good as that?

(Objected to, form and substance.)

Ans. I think that prior to that time they had been better, at least some of them.

Int. 7. Will you look at the three documents now shown you, marked F. W. P., and numbered respectively 20, 21, and 22, and say whether or not you witnessed the signature and execution of the same by Miss Howland; and, if so, when?

(Objected to for substance.)

Ans. I did; all of them. The one marked 20 was on the second of June, 1864. The one marked 21, on the 19th of September, 1864. And the one marked 22, on the day of its date, twenty-third of December, 1864.

Int. 8. What was the name of the attendant you have mentioned, who took hold of Miss Howland's pen and told her what letter to make next?

(Objected to for substance.)

Ans. Electa Montague.

Int. 9. Will you state, if you know, with what disease Miss Howland was supposed to be affected?

(Objected to for form and substance.)

Ans. I supposed from her appearance and from what I had heard that it was a spinal difficulty.

Int. 10. Will you look at the two papers now shown you, marked F. W. P., 10, and F. W. P., 15, and state, according to your best judgment and opinion, by whom they were signed?

(Objected to for form and substance, and as involving matter of opinion of one not shown to be qualified as an expert.)

Ans. In my opinion they were signed by Sylvia Ann Howland. I did not see them signed.

Int. 11. Whether or not you have, before this time, examined the same, with a view to forming an opinion.

(Objected to as before.)

Ans. I have. My first careful examination of them was a short time after Sylvia Ann Howland's death.

Int. 12. Whether or not, in the month of January, 1866, or at any other time, you had, with Governor Clifford, an interview with Electa Montague, in relation to any question about her witnessing, with Peleg Howland and Keziah Price, a paper signed by Sylvia Ann Howland? If yea, will you state, as nearly as you can recollect, all that occurred?

257 (Objected to for form and substance, and as not warranted by any examination heretofore had of Miss Montague, and as calling for incompetent and immaterial testimony.)

Ans. On the third day of January, 1866, at the request of Mr. Clifford, I went with him to see Electa Montague. We had an interview with her at a house on Summer street, New Bedford. After introducing Mr. Clifford to Miss Montague, he said to her that he had called to talk with her about a paper which purported to be signed by Sylvia Ann Howland, and witnessed by her and Keziah Price and Peleg Howland. He had the paper with him. She said that she remembered about it, and that she witnessed it. Mr. Clifford asked her if she knew what the paper was. She said yes; it was a will of Sylvia Ann Howland. Mr. Clifford asked her how she knew it was a will of Sylvia Ann Howland's. She said, because Sylvia Ann Howland told us so when she asked us to witness it. Mr. Clifford asked other questions about what she remembered was said at the time when the paper was signed, and she said—she replied that she could not remember much of the talk, because Miss Howland did most of

the talking with Peleg Howland. There was some conversation at that interview about a will of Miss Hetty Robinson's—Miss Hetty H. Robinson's—and what Hetty had said to her, Miss Montague, about having Miss Montague's brother sign as a witness Hetty's will. That's the substance of the interview as I remember it. There was other conversation about her health, and incidental chit-chat about her brother's health or his death, I forget which.

(Answer objected to by respondents as tending, if it has any effect, to contradict and impeach the testimony of witnesses introduced by the plaintiff, and examined upon matters for which the testimony of the witness now examined apparently refers.)

Int. 13. Were you retained by Miss Robinson as her counsel, and, if so, how early after her aunt's death?

Ans. I was; I think within three days after the funeral, the second or perhaps it was the third day after the funeral of Miss Sylvia Ann Howland.

Recess of one hour—1.15 to 2.15.

258 Int. 14. Whether or not, when you and Governor Clifford called on Electa Montague, had you any paper with you, and, if so, what was it?

(Objected to for substance.)

Ans. We had; it was this paper, marked F. W. P., No. 1; or he had the paper; I didn't have it.

Cross-examination:

Cross-int. 1. You said, in answer to a question put to you by Mr. Bartlett, that you had been retained as counsel by Miss Robinson. State what retainer you have received.

Ans. I received a retainer of one hundred dollars, which was paid to me at my second interview with her—second interview with her after her aunt's death.

Cross-int. 2. When you went with Mr. Clifford to see Electa Montague, say if he also had been retained as counsel with you.

Ans. I supposed so from what he had told me; I had no doubt about it.

Cross-int. 3. Does the retainer you have spoken of cover all the retainers that you have had from Miss Robinson since Miss Howland's death?

Ans. It includes all that I supposed was retainer—retaining fee. I have received other money from her since that time.

Cross-int. 4. Can you state, from recollection, upon what occasion you first witnessed Miss Howland's signature, and when?

Ans. I can't recall the time nor the particular circumstances. I only remember this, that I either went with Thomas Mandell or met him there by appointment. Mr. Mandell, I know, was present the first time that I witnessed her signature. My impression is, as near as I can state it, that it was about 1860. It might have been earlier; might have been later.

Cross-int. 5. Can you not state what it was that you went to witness?

Ans. I cannot now.

Cross-int. 6. Do you recollect any occasion, and if so state it, when you went there without Thomas Mandell?

Ans. The first time I went there I am positive Mr. Mandell was there. He might have been at the second and third times,
259 but I am not positive. After that Mr. Mandell was never there when I was there. On one occasion I went there, or met there Dr. Gordon.

Cross-int. 7. What was the occasion of your second visit to Miss Howland? What paper did you then witness?

Ans. My recollection is not clear or positive. I can only answer generally, and from recollection of the papers I usually witnessed there—papers whose execution I usually witnessed there.

Cross-int. 8. Is there any fact in your recollection that enables you to fix the time?

Ans. I noticed this morning a paper witnessed by me which, according to my best remembrance, was two or three years after I first went there. I recollect that when Dr. Gordon was there, the papers executed related to a house and lot occupied by Frederick Brownell. The date of that instrument, I think, was in 1863, and I had been there many times before that. I should think two or three years before; but it is a matter of remembrance, without referring to any dates.

Cross-int. 9. And can you not state, except as you have, and more definitely, in answer to that question?

Ans. Last summer I made a very imperfect examination of my account-book, to see about how many times I had been there. I did not examine with reference to the dates, and I doubt if my books would give accurately the date of the first interviews; still, that examination might have influenced my opinion as to the length of time.

Cross-int. 10. Can you state the third time when you called to Miss Howland's to witness any paper?

Ans. I cannot give the date.

Cross int. 11. Can you state the occasion?

Ans. I cannot.

Cross-int. 12. When did you see the papers verified by you this morning first after the time when you witnessed their execution?

Ans. The day before yesterday, in this office. I can't say that I saw them all. I saw some of them the day before yesterday, if not all.

Cross-int. 13. State what information you have, if any, as to the manner in which they were obtained.

Ans. I have none whatever. When Mr. Thaxter was in New Bedford, in August last—August or September last, whenever it was—
260 I remember saying to him that I had frequently witnessed Miss Howland's signature to discharges of mortgages and other papers pertaining to real estate in Chicago and other places. Beyond that I have no means of information, no means of stating.

Cross-int. 14. What other places besides Chicago did you name to him?

Ans. I do not remember any. I might have said to him that there were papers on our own records in Bristol county.

Cross-int. 15. On what occasion was Mr. Thaxter then in New Bedford?

Ans. This conversation was at my house in the evening. During the day, during the daytime, he was employed in taking depositions as Miss Robinson's counsel.

Cross-int. 16. You are employed with him, are you not?

Ans. I was.

Cross-int. 17. Was Miss Montague's deposition taken during that time?

Ans. Her deposition and that of others were taken about that time. Mr. Thaxter was there a number of days. At what period of that time I had this conversation with him, I don't remember.

Cross-int. 18. You assisted in taking Miss Montague's deposition, did you not?

Ans. I did.

Cross-int. 19. How long after the death of Miss Howland was it that Miss Robinson called on you, and how long was the interview?

Ans. I think it was the second day after Sylvia Ann Howland's funeral, but it might have been the third or fourth day. The interview was at her aunt's house. When I went home to dinner, I found a message from her to call at Miss Howland's house. The interview I should think lasted an hour. No one was present except Miss Robinson and myself.

Cross-int. 20. How long after that was your next interview?

Ans. I think it was the next day.

Cross-int. 21. State when you first saw the papers that are marked F. W. P., 10, and F. W. P., 15.

Ans. It was a few weeks after that after my first interview with Miss Robinson, I should say from three to six weeks, as an impression. It was before the probate hearing at New Bedford; I
261 am confident, very, it was before the probate hearing in the court-room at New Bedford before Judge Bennett.

Cross-int. 22. Whether or not you have not had and have not expressed some doubt or misgiving about those papers marked F. W. P., 10, and F. W. P., 15, as to whether they were signed by Sylvia Ann Howland? The question does not refer to your present opinion.

Ans. I never had the slightest doubt, and never heard the suggestion of a doubt from any source of their genuineness until after my return from the west in 1866, which was a day or two prior to the taking of the depositions in New Bedford, when I was told by defendant's counsel that they should try to prove them to be forgeries. Since then I have been shown photographs of the signatures, taken by Mr. Southworth, and the question has been incidentally asked if I could explain the appearances shown by those photographs.

(Counsel for respondents object to whole answer, after first line, as irresponsive.)

Cross-int. 23. When the examination took place in New Bedford,

last summer, did you suggest to Mr. Thaxter the questions to ask in regard to the interview between you and Miss Montague?

Ans. I think I did.

Cross-int. 24. And did you then expect to be a witness in this cause?

Ans. I did not. I had no such expectation.

Cross-int. 25. Did you expect that Mr. Clifford would be a witness in this case at that time?

Ans. I did not.

Cross-int. 26. Has Mr. Clifford been summoned as a witness in this case, to your knowledge?

Ans. Not to my knowledge.

Cross-int. 27. Do you know that he has declined to be a witness in this case?

Ans. I do not.

Cross-int. 28. The examination that you made of your account-book at New Bedford, last summer, at what time was that made with reference to your appearance at the taking of the depositions there?

Ans. It was about the same time.

262 Cross-int. 29. Did Mr. Thaxter examine with you those account books?

Ans. I think not.

Cross-int. 30. The examination of those account-books was made with reference to ascertaining, as nearly as you could, the times you had been at Miss Howland's, and witnessed or advised at the execution of papers, was it not?

Ans. It was made to refresh my memory as to the frequency of my visits there, but not with any expectation of being called as a witness. It was simply a matter of personal curiosity at the time.

(The answer from "but not" to the end objected to by respondents as irresponsive.)

Cross-int. 31. In the course of that examination, did you ascertain what papers were witnessed by you, and where they were?

Ans. No, sir. My books wouldn't show it.

Cross-int. 32. Did you make any intimation to Mr. Thaxter where these papers could be got?

Ans. I am quite sure I told Mr. Thaxter that I had witnessed papers that Sylvia Ann Howland had signed, that had been sent to Chicago and other places west.

Cross-int. 33. Well, now, Mr. Crapo, wasn't that suggestion made with a view to those papers being procured and used in this cause?

Ans. I had no means of knowing what use Mr. Thaxter would make of the information. I did not make the suggestion with that view to Mr. Thaxter. I can state more fully what was said by Mr. Thaxter and myself at the time, if desired.

Cross-int. 34. Repeat the question, please. (To the magistrate, who reads the question again.)

Ans. No, sir; not to my knowledge.

Cross-int. 35. Made for another and different purpose, was it?

Ans. The suggestion had no definite purpose that I am aware of.

Cross-int. 36. You were of counsel for Miss Robinson; you knew the question of the genuineness of those signatures had been raised; you stated that you had witnessed her signatures and where those signatures could probably be found; you had examined your account-books to ascertain, as accurately as you could, the dates when the business was done, and yet you say that you had no purpose in making the suggestion as to where the papers could be procured,

263 and no expectation of being called as a witness to identify the papers which you say were signed in your presence as an attesting witness?

Ans. Yes, sir; I did not make any accurate examination. I referred to my books simply to enable me to form an opinion how frequently I had been to Sylvia Ann Howland's The facts stated by me to Mr. Thaxter were not stated to him with any request or the expression of any opinion about hunting up those papers, and I had no idea, at the time, that I should be called as a witness.

Cross-int. 37. Who served the subpœna upon you to be a witness here?

Ans. There has been none served upon me.

Cross-int. 38. When last, before your examination, did you see Mr. Sidney Bartlett, senior counsel for the plaintiff?

Ans. On Wednesday last, the day before yesterday.

Cross-int. 39. Did you go over with him the matters about which you were to testify?

Ans. I did; very briefly.

Cross-int. 40. Did he take any notes of your testimony?

Ans. I think not.

Cross-int. 41. Are you confident about it?

Ans. I am quite confident about it. I think Mr. Bartlett asked his son to take some notes, but I believe he didn't do it. We were together but a few moments.

Cross-int. 42. Do you know, sir, of any photographs being taken of these papers, Nos. 19, 20, 21, and 22—(At this point, the question unfinished, the examination is suspended to give the witness a chance to catch the 4.30 p. m. train for New Bedford, and adjourned to Monday, April 15, 1867, at 10 a. m. The examination is to proceed, with another witness, at 9.30 a. m., Saturday, April 13, 1867. Monday, April 15, 1867, 10 a. m. The parties met. On motion of counsel for the respondent, that the magistrate fix the hours of the examination, the magistrate, in view of the early day at which the testimony is to be closed, and the fact that he is informed that much remains to be taken, names as hours for examination half-past nine a. m. to one p. m., and two p. m. to half-past four p. m., it being understood that longer time daily is to be allowed if the necessity therefor becomes apparent. The examination proceeds:)—and, if so, when they were taken?

264 Ans. I do not. I have seen photographs of Miss Howland's signatures, but whether they included photographs of signatures Nos. 19, 20, 21, 22—that is, to exhibits so numbered—I do not know.

Cross-int. 43. In whose handwriting is the body of this instrument, No. 19?

Ans. It is in the handwriting of Edmund T. Allen, former clerk and student in my office.

Cross-int. 44. Where did Mr. Lawton reside at the time he witnessed that paper?

Ans. I do not know. My memory is very imperfect about Mr. Lawton.

Cross-int. 45. Where does he now reside?

Ans. I do not know.

Cross-int. 46. What enabled you to recollect, at this day, the position occupied by Miss Howland, or her posture, on the eleventh day of April, 1862, when you say she signed that paper?

Ans. Because my recollection is quite distinct and positive that I never saw her sign her name except as she was seated on the lounge.

Cross-int. 47. Is not that matter of reasoning rather than of memory?

Ans. It is partially. As already stated, I do not recollect the circumstances of the interview of April 11, 1862, in distinction from other interviews.

Cross-int. 48. What was the earliest interview which you had when you witnessed the signature of a paper by her?

Ans. I do not remember; I can only give my impression.

Cross-int. 49. If I understand your answer in relation to this interview of April 11, 1862, your memory does not enable you to distinguish the transaction from any other?

Ans. It does not.

Cross-int. 50. You do not recollect, then, whether anybody assisted Miss Howland in making the signature to that particular paper.

Ans. As a matter of distinct remembrance, I do not. I have no doubt, whatever, what the fact is in reference to it. I suppose the question to be confined to my present remembrance of what occurred then. I do not now remember.

265 Cross-int. 51. Do you now remember whether Sylvia Ann Howland was in a reclining posture when the signature to that paper was made?

Ans. I can only answer the question by stating the posture that she was generally in—universally in, as far as I saw.

Cross-int. 52. I repeat the question.

Ans. I would like for the question to state what is meant by "reclining posture."

Cross-int. 53. I shall have to leave that, in connection with his former testimony, to the form of the question itself. I wish the magistrate to call the attention of the witness to the form of the question: "Do you now remember?"

(The magistrate does so.)

Ans. I do not now remember as a matter of distinct remembrance.

Cross-int. 54. Your best recollection of the earliest time that you witnessed a signature of Miss Howland's? Mere impression I do not ask for.

Ans. I can only recollect this about it. That I either went with Mr. Mandell, or met him there, but the date I cannot fix from any remembrance.

Cross-int. 55. Nor the occasion?

Ans. It was to witness her signature and take her acknowledgment, as a magistrate.

Cross-int. 56. The year, if your memory enables you to swear to it?

Ans. My memory does not enable me to swear to it.

Cross-int. 57. Have you examined your books with a view to ascertain the earliest date of your calling on Miss Howland, to witness her signature and take her acknowledgment?

Ans. I have not.

Cross-int. 58. Would they enable you to fix the date.

Ans. Not with certainty.

Cross-int. 59. These papers produced seem to indicate that your employment in these cases was that of a conveyancer. Was that the fact?

Ans. It was.

Cross-int. 60. Did you not enter a charge upon your books for the service? And, if so, would not that give the time when you witnessed the signature?

266 Ans. If not paid for at the time, I undoubtedly charged it. If paid for at the time, my entries would not show it necessarily. Since my connection with Mr. Stone, in June, 1862 or 1863, my books would show it. I think the date is June, 1862.

Cross-int. 61. Did Mr. Mandell ever pay you cash, instead of your charging it?

Ans. I think he did sometimes.

Cross-int. 62. Will you say that he did?

Ans. I can't state from positive remembrance. I know that Mr. Mandell has, at times when I have rendered service, paid me when there was no—when no charge had been entered, for instance, in making settlement of some sailors' voyage, I have been instructed to settle on the best terms I could, and I have paid the money, and when I reported to him he would pay my disbursements and my fee at the same time, and no charge would be made of it.

Cross-int. 63. What is the earliest charge upon your books, if you are able to state, for any matter of conveyancing to which Miss Howland was a party?

Ans. I am not able to state.

Cross-int. 54. Were you ever consulted, Mr. Crapo, in relation to any wills made by Miss Howland?

Ans. Not prior to her death.

Cross-int. 65. Looking at No. 20, tell me where Mr. Tallman resided at the time that paper was signed.

Ans. He resided in New Bedford. He was a clerk in my office.

Cross-int. 66. Where now?

Ans. He now resides in New Bedford.

Cross-int. 67. Look at No. 21, and tell me where Mr. Cobb, a

witness to that instrument, resided at the time he witnessed that paper, and where he now resides.

Ans. Then and now in New Bedford.

Cross-int. 68. Please look at No. 22, and say whether the Electa Montague who witnessed that instrument is the same person as she who has been examined as a witness in this cause.

Ans. She is the same.

Cross-int. 69. Turning, if you please, to No. 19, state, if you can recollect, where that was signed—in what house and what room.

267 Ans. It was signed in Miss Howland's house on Eighth street, in the front room over the parlor.

Cross-int. 70. Is that statement an act of memory as to this particular paper?

Ans. Not entirely.

Cross-int. 71. Have you a present recollection of the place—the room—where that instrument was signed by Miss Howland?

Ans. I have a present recollection that I never saw her sign her name except in that room.

Cross-int. 72. Is that an answer to the question?

Ans. I think it is, because I have already stated that I recollect none of the incidents of that occasion separated from others when I witnessed her signature.

Cross-int. 73. As matter of recollection, was Electa Montague in the room when paper No. 19 was signed?

Ans. As matter of recollection, I cannot say. As matter of recollection simply, I cannot state.

Cross-int. 74. What was the day that you and Mr. Clifford called on Miss Montague?

Ans. The third of January, 1866.

Cross-int. 75. How do you fix the date?

Ans. From a memorandum made by Mr. Clifford at the time.

Cross-int. 76. What day of the week was that?

Ans. I cannot tell.

Cross-int. 77. You and Mr. Clifford were at that time acting as counsel in the present suit, were you not?

Ans. We were.

Cross-int. 78. And such examination as took place on that occasion, by Mr. Clifford and yourself, was made with reference to her being a witness for the plaintiff, was it not?

Ans. I do not know about that.

Cross-int. 79. Not the purpose of your own mind?

Ans. Not the purpose of my mind.

Cross-int. 80. Mr. Crapo, were you present when the examination of Miss Robinson was made, or have you read her testimony, and especially that part of it which relates to the signature to F. W. P., No. 1?

Ans. I was not present. I have never read her testimony.

268 Cross-int. 81. And do not know what it was?

Ans. I do not.

Cross-int. 82. Were you present when Peleg Howland was examined as a witness by plaintiff in this cause?

Ans. I was not.

Cross-int. 83. Do you know whether Mr. Clifford was present at the examination of Electa Montague and Peleg Howland in this case?

Ans. I do not. Mr. Clifford was not present when Miss Montague's testimony was taken for the respondents.

Cross-int. 84. Do you not know from Mr Clifford's statement that he was present at and conducted in part the examination of Peleg Howland and Electa Montague on behalf of the plaintiff?

Ans. I do not, for I do not remember Mr. Clifford's ever speaking to me about it.

Cross-int. 85. When did you see that memorandum made by Mr. Clifford?

Ans. Thursday last—Thursday of last week—at about half past three in the afternoon.

Cross-int. 86. Where and by whom shown to you?

Ans. In Mr. Clifford's library, at his house. It was shown to me by Mr. Clifford.

Cross-int. 87. Did you read it?

Ans. I did.

Cross-int. 88. Did you have it with you when you conducted or assisted in conducting the cross-examination of Electa Montague, at New Bedford, last summer?

Ans. I did not.

Cross-int. 89. Did you remember the interview when you conducted or assisted in conducting her cross-examination last summer, as you recollect it now, with the same distinctness and in the same way?

Ans. Yes, sir; I think so.

Cross-int. 90. Do the questions put by you on cross-examination of Electa Montague last summer, represent clearly and distinctly your then recollection of that interview?

Ans. The questions were put by Mr. Thaxter. The suggestions which were made by me to him at the time represented my remembrance of it at that time.

269 Cross-int. 91. Did the questions put by Mr. Thaxter, when you were present and sitting by his side, represent clearly and distinctly your then recollection of the interview between Electa Montague, Mr. Clifford, and yourself?

Ans. I think they did; but I do not know that they embraced all my recollection, even at that time.

Cross-int. 92. Was not that cross-examination made by Mr. Thaxter and yourself with the express view of contradicting Electa Montague in relation to her testimony as to the signature to that will?

Ans. I do not know Mr. Thaxter's purpose. He had the management of the matter, and not I. My idea in calling his attention to it, was in consequence of her deposition which had been taken before Mr. Wilcox, in which she stated, if I recollect aright, that she had never witnessed any will of Sylvia Ann Howland. I did not, at that

time nor now, know what she testified when examined by the plaintiff in this cause.

Cross-int. 93. Please repeat the question.

(The magistrate reads cross-interrogatory ninety-two again.)

Ans. I cannot answer the question any differently.

Cross-int. 94. Does the witness mean to say that he did not know the object of that cross-examination, and that, so far as that part of it was concerned, he didn't do the thinking and suggesting part of it?

Ans. I do; for Mr. Thaxter did not communicate to me his purpose, and my purpose I have already explained.

Cross-int. 95. Does the witness mean to say, from his experience and observation as a leading member of the bar of his county in constant consultation with Mr. Thaxter as to the examination, suggesting himself the questions to be put, that he didn't know the object or purpose for which they were put, and put with such detail as to time, circumstance, and person, so as to bring them within the rule of the court who are to try the cause?

Ans. I do; for I had no charge of or responsibility for the examination.

Cross-int. 96. Do you mean to say, when you say that you had no charge of or responsibility for the examination, that you were not present as counsel for plaintiff, and acting for her?

270 Ans. I was so present, assisting Mr. Thaxter.

Cross-int. 97. Did not Mr. Thaxter put the questions on this point as you suggested them to him?

Ans. My remembrance is, that I communicated this interview with Electa Montague to Mr. Thaxter in the recess of her examination. I recollect aiding him in forming the questions from my remembrance of what occurred at the interview.

Cross-int. 98. Did you write some of the questions yourself for her examination, and pass them to Mr. Thaxter?

Ans. Do you mean these particular questions?

Cross-int. 99. The inquiry is not so limited.

Ans. I think I did.

Cross-int. 100. Had the transaction or interview between yourself and Miss Montague and Mr. Clifford faded from your memory, and, if so, at what time did your recollection fade?

Ans. I am not conscious that my recollection has faded at any time, except as to the minor conversation which occurred between Mr. Clifford and Miss Montague on matters not connected with the paper of January, 1862.

Cross-int. 101. You did not refer to the memorandum of Mr. Clifford to refresh your recollection of the minor, unimportant matters and chit-chat, did you?

Ans. No, sir; I did not.

Cross-int. 102. Your object in referring to the memorandum of Mr. Clifford, then, was to refresh your recollection of the important matters of that interview?

Ans. Yes, sir; together with the date.

Cross-int. 103. As distinct from the refreshing of your memory by that memorandum, and as a distinct act of your own memory, do you recollect all that interview—what was said and done?

Ans. With the exception of the date, I recollect of my own memory, independent of the memorandum, all I have testified of that interview.

Cross-int. 104. Was that so on Wednesday last?

Ans. Yes, sir.

Cross-int. 105. Did Mr. Clifford and you talk over, at the time that you saw him, what took place at this interview?

Ans. We did.

271 Cross-int. 106. Was Mr. Clifford notified that he would be wanted as a witness at the same time that you were, so far as you know?

Ans. Not to my knowledge.

Cross-int. 107. Nothing said about his being a witness at this interview?

Ans. There was not. From his conversation, I inferred he did not know that this examination was going on, or any examination in the case.

Cross-int. 108. Didn't you express your preference to Mr. Clifford that, as you had conducted or assisted in conducting the cross-examination of Miss Montague as counsel, and he (Mr. Clifford) had not, and, as he had made the memorandum at the time, and you had not, that he should testify as to that interview rather than yourself?

Ans. I did not.

Cross-int. 109. Did Mr. Clifford say he wouldn't testify in the case?

Ans. He did not.

Cross-int. 110. Have you made any examination of your books, Mr. Crapo, to ascertain the number of times that you were at Miss Howland's, or to aid you in arriving at that result?

Ans. I have not.

Cross-int. 111. Will you do so?

Ans. If desired, and time is given, I will do so. It will require considerable time.

Cross-int. 112. It is desired; and time is of no consequence compared with getting at the truth. Did you bring your book or books with you to enable you to make that examination?

Ans. I brought my books with me in compliance with a written application from Mr. Stetson, made last evening. I mean Mr. Stetson, one of the counsel for respondents.

Cross-int. 113. It is desired that you should make that examination before the close of your examination.

Ans. It is impossible for me to do it to-day.

Re-examination:

Int. 1. You have been asked, in the twenty-fourth, thirty-sixth, and thirty-seventh cross-interrogatories, whether you expected to be a witness in the cause, and whether you have been subpœnaed.

272 Will you look at the paper now shown you, marked F. W. P., 23, and say by whom it was written, and in answer to what, if anything?

(Objected to as leading, and as not re-examination on any matter opened by respondents in cross-examination.)

Ans. It was written by me in answer to a note received on the day of the date of my letter, April 6, 1867, from Mr. Bartlett, one of the counsel for plaintiff, in which he stated—(Here the witness is stopped by counsel for respondents.)

Int. 2. Will you look at cross-interrogatory fifty, and your answer thereto, and state what the fact is of which you have no doubt?

(Objected to as leading, and as not opened by respondents on cross-examination, but re-examination on a matter on which he was examined in chief.

Counsel for respondents request that it be noted that before the preceding question was put to witness, counsel for plaintiff read to him cross-interrogatories and answers thereto, from forty-five to fifty inclusive, against the objection of counsel for respondents. This was done after counsel for respondents had objected to counsel for plaintiffs informing the deponent what "that particular paper," mentioned in cross-interrogatory fifty, was, after the witness had asked to be informed.)

Ans. The fact of which I have no doubt is, that she wrote her name to paper No. 19 without assistance.

Recess—1.15 to 2.

Int. 3. You have been asked, in the twenty-first cross-interrogatory, when you first saw the papers marked F. W. P., 10, and F. W. P., 15. Will you now state when and how you first knew of their existence?

(Objected to, because the subject-matter, in regard to which the examination is made, was a matter upon which the witness was examined by the plaintiff in chief, because the cross-examination was confined to the matter opened in chief, because the matter as to which the inquiry is made was not opened by respondents in cross-examination, because the question is leading in form, because the relation which witness sustains to the cause as counsel for plaintiff requires that the rule should be applied with great strictness, and because it is incompetent and immaterial in substance.)

Ans. I first knew of those papers from statements made to me by Miss Robinson at our first or second interview after her aunt's
273 death. This, I think, was in June. I mean funeral.

(Answer objected to as containing statements of his own client, not under oath, and every way incompetent, counsel not holding the relation to a client which a doctor does to a patient.)

Int. 4. How many days after the funeral was the communication you have stated made to you by Miss Robinson?

(Objected to as above.)

Ans. Within a week, certainly, and I think within three or four days after the funeral.

Int. 5. Will you look at your answers to the fifty-first and fifty-second cross-interrogatories, and state whether or not Miss Howland was in a reclining posture when she affixed her signature to either of the papers, 19, 20, 21, 22 and, if not, what posture she was in? Describe the same carefully.

(Objected to, because the witness was examined, and answered in his examination as to the matter as to which inquiry is now made; because the question is not as to any matter opened by us, and is otherwise incompetent; and because the witness, in reply to the same question put by us, as indicated by the record, replied that he did not understand it, and because it is leading in form.)

Ans. She was not lying upon her back; she was seated upon the lounge, with a board or book before her, in her lap, or on her lap, and she leaned over forward when writing her name.

Int. 6. Will you look at your answer to the twenty-second cross-interrogatory, and state at what place and in whose presence the interview referred to took place?

(Objected to as above, and as assuming a fact not in proof.)

Ans. It was at Judge Thomas's office. Mr. Southworth was there, Judge Thomas, and Mr. Stetson.

Int. 7. How came you at Judge Thomas's office at that time?

Ans. I happened there accidentally—I think to see Mr. Pitman—and what I saw of the photographs was before the examination of witnesses that morning. I remember now, distinctly, that I had a paper which I wished Mr. Pitman to sign, and went there to get his signature to it.

Int. 8. Whether or not, during that period which you have spoken of, of your interviews with Miss Howland, did she at any
274 time write anything but her signature to papers, and, if so, what?

(Objected to as re-examination on matter not opened by respondents.)

Ans. She never wrote anything in my presence except her signature.

Cross-examination resumed:

Cross-int. 1. When you were asked by the counsel for plaintiff, in your examination in chief, what was the posture of Miss Howland when she signed those papers, what was your answer?

Ans. I cannot give the exact language used by me. I can only state her posture as it appears in my mind's eye at this time. I think I stated in the direct examination that she was seated upon a lounge, with her feet upon the lounge, and that she was supported with cushions or pillows.

Cross-int. 2. Is that the way her posture now appears in your mind's eye?

Ans. It is.

Cross-int. 3. And was that the way it was presented to your mind's eye when you answered the question in chief?

Ans. It was.

Cross-int. 4. And did you answer in chief as follows: "She was at that time an invalid. When she affixed her signatures she was lying upon a lounge, supported by pillows or cushions, with her feet upon the lounge?"

Ans. I think I did.

Cross-int. 5. Have you any doubt?

Ans. No, sir; none whatever. It is not so much, however, the remembrance as the reading of it by Judge Thomas.

Cross-int. 6. When the question was put to you, whether she was reclining, by the counsel for the respondents, when she signed these papers, what was your answer?

Ans. I asked what was meant by "reclining," because I did not wish to be understood as saying that she wrote her name when lying upon her back.

Cross-int. 7. When you were referred to your answer to the direct interrogatory for the meaning of the question, what was your answer then?

275 Ans. I don't understand the question.

Cross-int. 8. Is that the only answer you wish to make to that?

Ans. Yes, sir.

Cross-int. 9. When you asked the meaning of the word "reclining," and it was said, in substance, by counsel for respondents, that, taken in connection with your answer to the direct interrogatory, it did not require explanation, what was then your answer?

Ans. I cannot recall it, because I cannot recollect what the question was—just what was the form of the question. I cannot recall the phrases used by me.

Cross-int. 10. What new light has been thrown on the meaning of the word "reclining," since the cross-examination, by the re-examination?

Ans. None.

Cross-int. 11. Mr. Crapo, at any time, at the office of Mr. Thomas or elsewhere, were you ever asked by Mr. Thomas to explain any photographs, or to account for them or anything on them, or anything to that substance or effect?

Answer. Not that I remember; I might have been, but I don't remember.

Cross-int. 12. Were you ever asked that question by Mr. Stetson?

Ans. Not that I remember.

Cross-int. 13. Were you ever asked that question in Mr. Thomas's presence, or Mr. Stetson's presence, by anybody?

Ans. I have been asked that question hundreds of times, but I have no present remembrance of being asked that question in their presence.

Cross-int. 14. Did you ever have any conversation with Mr. Thomas in relation to the trial of this cause, or the modes of proof, in any form?

Ans. I don't recall any such, now.

Cross-int. 15. When was Miss Howland buried?

Ans. Well, I can't fix the date exactly; my mode of fixing the date would be this: I know the season of the year and about the time. I was in Washington at the time of the grand review, and Miss Howland's death occurred a few weeks after—a few weeks after my return; but whether two weeks or six weeks I can't say.

276 Cross-int. 16. How long after the funeral of Miss Howland before Miss Robinson went again to New York?

Ans. I do not know; if I knew, I have forgotten.

(The examination now closes, with the understanding that the witness is to examine his books, and submit such statement of the number and dates of his visits to Miss Howland, on business, as he may be able to derive therefrom, the same to be annexed to this deposition, if either party desires, and either party to have a right to have the witness recalled, and to examine him further thereon.)

Cross-int. 17. Are you able to state, upon your recollection, that you ever went to Miss Howland's to take her signature before the eleventh of April, 1862?

Ans. I cannot, from my recollection.

Re-examination:

Int. 1. Although you cannot remember any particular visit prior to April 11, 1862, state, according to your best recollection, whether or not you had been there previously, and, if so, how often, and from what period.

(Objected to, form and substance.)

Ans. I cannot state, from recollection, that I went there before that time. I have an impression about it.

Int. 2. State what that impression is.

(Objected to, form and substance.)

Ans. My impression is, that I went there before that, perhaps a year before—perhaps longer; but I have no present recollection. I don't know as it would be competent, but I could give the reasoning in my mind.

Int. 3. Please give it.

(Objected to for form and substance.)

Ans. I went there with Doctor Gordon, about Frederick Brownell's papers. I find that one set of his papers were in February, 1863. I am quite confident I had been there several times before that, covering an interval, according to my best judgment, of say two years.

WM. W. CRAPO.

The paper hereto attached, marked F. W. P., 22—Crapo, is the paper referred to in the memorandum between the answer to
277 the sixteenth cross-question and the seventeenth cross-question. It is annexed by consent of parties, made this sixth day of May, A. D. 1867, in my presence, and the examination of Mr. Crapo is closed, without either party's asking that he be recalled for the purpose of examination thereon.

F. W. PALFREY,
Special Examiner.

F. W. P., 22.—*Crapo.*

I have carefully examined my account books, with reference to charges for services in witnessing the signature and taking the acknowledgment of Sylvia Ann Howland, and find the following:

April 9th 1862— I. Howland Jr. & Co. Dr.
for wri. discharge to Mortgage Van Hiller (?) Illinois—and ackt. & clerks certificate $3.—

Feby. 12' 1863— Cash recd.
of Sylvia Ann Howland—for deed—Fred. Brownell $2.—
do— for govt. stamps 2.40

Aug. 18' 1863— Thos. Mandell Dr.
to pow. of Atty. from Sylvia Ann Howland 1.—

Dec. 3d 1863— I. Howland Jr & Co Dr.
For taking ackt. to release of Chicago Mort & going to house of Sylvia Ann Howland— 2.—

Dec. 9' 1863 I. Howland Jr. & Co Dr.
To ackt. of T. Mandell and Sylvia Ann Howland—to release of Chicago Mort. and stamp 1.55

March 26' 1864 Cash recd. of I. Howland Jr. & Co—
For wri. deeds &c. & Govt. stamps in matter with Fred. Brownell & child } 11.—

June 2d 1864— J. Howland Jr. & Co. Dr.
For govt. stamps on Assgt. of Mort — 5.05
For services—in ackt. of Chicago deed—T. M. & S. A. H. 3.—

278 July 19' 1864 Cash recd.
of Sylvia Ann Howland—for ackt. 1.55

Aug. 29' 1864 I. Howland Jr. & Co. Dr.
For wri. release of Mortgage (Michigan) and taking ackt. of T. M. & S. A. H. & stamp 3.05

Sept. 19' 1864 I. Howland Jr. & Co. Dr.
for ackt. of Assignt. of Chicago Mort. new house
of Sylvia Ann Howland & T. M. 3.—

Dec. 23d 1864 I. Howland Jr. & Co. Dr.
For ackt. of Sylvia Ann Howland to Illinois release— 2 05

WM. W. CRAPO

April 25 1867—

Note. I have doubts about having witnessed the power of Atty. charged Aug. 18' 1863. All of the other papers named in above charges I am positive were signed by Sylvia Ann Howland in my presence

WM. W. CRAPO

Deposition of John A. Lowell.

John A. Lowell, of Boston, engraver, aged twenty-nine years, being duly sworn, testifies as follows:

(Counsel for plaintiff states here that he offers the testimony of this witness de bene esse, and without waiving any objection to the testimony introduced on the part of the defendants in relation to the genuineness of the signatures to papers F. W. P., 10, and F. W. P., 15.)

I am an engraver, and carry on business at No. 228 Washington street, Boston. I have a partner, and the name of the firm is Lowell and Brett. I have carried on the business of engraving in Boston for the last ten years. It is about fifteen years since I com-
279 menced learning the trade, and I have had a general knowledge, I suppose I might say, of everything there is done in the business. I might say I have had experience in my business with everything connected with the business. I commenced my trade with my father, Lowell and Senter, Portland, Maine, as an engraver of silverware. The rest of my trade has come to me by my experience—as steel and copper engraving. I have been practically engaged in all branches of the business except vignettes, that is, picture work. "All branches" means designing and engraving of letters of all kinds. That, I suppose, would include a specialty we have made, of monograms. I have had a great deal of practical knowledge, by engraving, myself, of engraving handwriting. By considerable experience, I meant practical knowledge of engraving signatures, fac-similes of signatures, for visiting cards. I have worked more or less for about ten years at engraving signatures, and making fac-similes of signatures. We have done a very extensive business within six years.

Int. 1. Please state in what way fac-similes are made, and what, if any, knowledge of tracing you have.

Ans. In regard to fac-similes, I have made them by re-writing them—that is, by looking at the signature, having it directly before me, and writing with a pencil, only in such cases where people wished me to correct irregularities—in other words, what we call flattering the signature. In cases where accuracy is required, we either go over the original signature with a pencil, a soft pencil, or trace it on a piece of prepared paper. More or less of bank-note work and fine steel-plate work is done by tracing. The majority of the lettering is done by tracing. I have engraved a good many bank checks myself by that process, getting the outline in that way, on the plate.

Int. 2. State whether or not you have been employed by the government in any way and in what way, in engraving anything, and what.

Ans. I have not.

Int. 3. Whether or not you have been employed in engraving any bonds or coupons, or have, or have had any contracts in regard to same, or have had anything and what to do with the cable contract, so called.

(Objected to for form and substance.)

Ans. I have not been employed in engraving any bonds or coupons. I have had no positive orders yet in regard to engraving any bonds or coupons. There has been no contract given out for the cable contract.

280 Int. 4. Have you or not examined, and, if so, carefully or otherwise, and for what purpose, the signatures "Sylvia Ann Howland" to the three papers now shown you, marked F. W. P., and numbered respectively 1, 10, and 15, and the enlarged photograph of the same in the pocket attached to the cover of the large book now shown you? Also, the signatures "J. Q. Adams" to papers now shown you, marked Adams, F. W. P., and numbered respectively 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101? Also, the signatures "C. A. Walker" to the papers now shown you, marked Walker, F. W. P., and numbered respectively 623, 633, 555, 579, 575, 623*a* 656, 679, 670, 669, 582? Also, the signatures "Joseph B. Spear" and the words "Very respectfully, your obedient servant," immediately over and preceding said signature in the papers now shown you, marked Spear, F. W. P., and numbered respectively 45, 10, 5, 6, 8, 20, 24, 26, 27, 29, 33, 34. 35, 39, 40, 41, 43, 44, 48, 49, 52, 54? Also the signatures "Stephen Fairbanks" to the paper now shown you, marked Fairbanks, Dividend 41, F. W. P., and papers marked Fairbanks, F. W. P., and numbered respectively 205, 114, 272, 311, 312, 370, 422, 706, 740, 747, 619, 1,423, 2,191, 1,660, 355, 2,303, 2,365, 822, 843, 1,347, 1,543, 1,682, 1,837, 1,838, 2,021, 2,061, 1,860, 2,650, 2,074? Also the signatures "Saml. W. Swett" to papers now shown you, marked Swett. F. W. P., and numbered respectively 36. 30, 46, 34, 41, 35, 39, 37, 12, 38, 152, 143, 29, 144, 57, 127, 48? Also the signatures "F. W. Palfrey" to papers now shown you, marked Palfrey, W. S. D., and numbered respectively 285, 282, 279, 277, 274, 271, 265, 270, 260, 246, 238, 226, 218, 216, 214, 206, 174, 171, 170, 163, 159? Also the signatures "Geo. C. Wilde" to papers now shown you, marked Wilde, F. W. P., and numbered respectively 11, 60, 59, 56, 52, 44. 35, 29, 27, 25, 19, 17, 14, 13, 8, 6, 5, 4, 3, 1? Also the small and enlarged photographs of the signatures "J. Q. Adams," "C, A. Walker," "Joseph B. Spear," "Very respectfully," "Your obedient servant," "Stephen Fairbanks," "Saml. W. Swett," "F. W. Palfrey," "Geo. C. Wilde," on plates from 1 to 14, inclusive, in the book now shown you, and the riders to these photographs in the pockets attached to these plates?

(Objected to, first, because the witness is not qualified as an expert upon the points on which he is called to testify; second, as assuming facts not proved, to wit, that the papers to which he is called to testify are photographic copies of any papers whatever, or

281 that the papers purporting to be signed by J. Q. Adams and Stephen Fairbanks were ever signed by them; that the question is leading in form; that it calls for testimony incompetent and immaterial in substance, and because the question assumes another fact not proved, to wit, that papers 10 and 15 ever were signed by Sylvia Ann Howland.

While counsel for plaintiff was showing the papers to the witness, for the purpose of letting him see whether or no they were the papers mentioned in the question, preparatory to having the question put to him, the counsel for defendants objected to that method of procedure, and insisted that the question should be put to the witness as recorded. The magistrate thereupon proceeded to compare with the witness the papers produced with the papers named in the question. When they came to the Swett parcel the witness said, "I never examined the Swett papers at all." Counsel for defendants requested that this be noted.

Counsel for plaintiff produce to magistrate a paraffine paper and a pasteboard, taken from pocket attached to cover of book marked R. vs. M., F. W. P., and states that he offers the two as enlarged photographs of signatures of Sylvia Ann Howland, mentioned in commencement of his question, and the magistrate thereupon marks the former F. W. P., Rider A, and the latter, F. W. P., Photograph A.

Counsel for respondents objects to the introduction of these papers into the case, and to their being marked or identified by the magistrate for that purpose, before any evidence has been offered by the plaintiff, or comes from any source, that the papers are photographs of the papers F. W. P., 1, F. W. P., 10, F. W. P., 15, or of any other papers used as evidence in this cause.

The magistrate also showed to the witness plates from 1 to 14, inclusive, in the book marked R. vs. M., F. W. P., and the riders to these photographs in the pockets attached to these plates. The magistrate then put the question:)

Ans. I have examined very carefully, both of them, to see whether one of the signatures covered another. I can't recollect numbers. (The witness now takes the papers marked F. W. P., 1, 10, and 15, and the photographs in the pocket attached to the cover of the large book R. vs. M., F. W. P., and says:) To see whether 10 and 15 covered 1, I have examined very carefully the signatures "J. Q. Adams" to papers now shown me, marked and numbered as
282 stated in the interrogatory. I examined Mr. Adams's signatures, to see if any of his covered. I have examined carefully the signatures "C. A. Walker" to papers now shown me, marked and numbered as stated in the interrogatory. To satisfy myself whether it was possible for a person to write so that one signature would cover or nearly so, I have examined the majority of the signatures "Joseph B. Spear" to the papers now shown me, and the words on the same, "Very respectfully, Your obedient servant;" the papers being marked and numbered as stated in the interrogatory. I did not examine all of them. Those I examined, I examined carefully, for the purpose of assisting me in forming an opinion whether it was possible for a person to repeat himself, to repeat a signature. I have carefully examined the signatures "Stephen Fairbanks," mentioned in the question; that is, I have examined a sufficient number of them to assist me in forming an opinion as before. I did not see the "Swett" signatures inquired of at all. I examined nearly all of the "F. W. Palfrey" signatures inquired of for the

same purpose as before stated in regard to other signatures. I examined carefully those that I did examine. I examined a large number of the "Geo. C. Wilde" signatures inquired of, carefully, for the same purpose. I examined nearly all of the small and enlarged photographs of the signatures mentioned at the close of the question, except those of the Swett signatures, which I didn't examine at all. If I understand the question correctly in relation to the large and small signatures, I examined them carefully in order to express an opinion whether the large ones were photographs from the original signatures. I say large and small, if they were photographs—as they were photographs, rather.

Int. 5. State whether, in examining the signatures which you state you have examined, for the purpose of seeing whether they would cover, as you have stated, you made any and what examination of the enlarged photographs referred to, and in what, if in any way, they aided you in such examination in regard to the question of covering.

(Objected to for form and substance and as above.)

Ans. I did examine the large photographs, and it is a well-known fact in our business that an enlarged photograph of a drawing shows more clearly any defects, if any there be.

Int. 6. From the examination which you state you have made of the signatures "Sylvia Ann Howland" to papers F. W. P., 283 1, 10, 15, and of the enlarged photographs and riders of that signature before referred to, and of the other signatures and photographs and riders which you have testified you have examined, please state what you found in regard to the other signatures covering, as compared with the three signatures of Sylvia Ann Howland before referred to, placing F. W. P., 10 and 15, over F. W. P., 1.

(Objected to as above, and especially as an examination of the witness as to papers of the genuineness of which no evidence has been offered, to wit, the photographs, or what are offered as such.)

Ans. I found quite a number of signatures shown me to examine that covered quite as well, or better, in my opinion, than the ones in question. I mean the Sylvia Ann Howland signatures.

Int. 7. Will you look at the signature Sylvia Ann Howland to the paper now shown you, marked R. C. P., 4, and at the signature Sylvia Ann Howland to the paper now shown you, marked R. C. P., 42; also at the photograph of "Sylvia Ann Howland," in Plate 2, of Book R. vs. M., F. W. P., marked 4 and 42 on said plate, and state, by placing signature No. 4 over signature No. 42, how they compare as to covering with F. W. P., 15, placed over F. W. P., 1.

(Objected to as above.)

Ans. My opinion is, that those in the blue papers marked 4 and 42, cover better than those in the papers marked 15 and 1.

Int. 8. Please state whether you have compared the papers mentioned in the last interrogatory, with a view to forming an opinion, prior to the present time, and, if so, when and how many times and how carefully.

(Objected to as above.)

Ans. I have compared them once before—I should think ten days ago—quite carefully.

Int. 9. Please look at the signatures "Sylvia Ann Howland" to papers F. W. P., 1, 10, and 15, and state as to the signatures on 10 and 15, whether you see any, and what, indications that the same were or were not made in any way by tracing, in your judgment—and what, if any, examination you have made in forming that judgment.

(Objected to as above.)

Ans. I examined the signatures as many as four times to-day, and I should say as many more a week or ten days ago - ten days, say—to see if the letters were of the same shape and the spacing correct, and having examined other signatures shown me, I could see
284 no indications whatever that any tracing had been made, or -rather the signatures counterfeited.

Int. 10. State what other signatures you refer to as having been shown to you.

(Objected to as above.)

Ans. The same signature on the blue papers marked R. C. P., 4, and R. C. P., 42.

Int. 11. Please state whether or not you made any, and what, examination in placing the signature Sylvia Ann Howland to paper F. W. P., 15, over the signature Sylvia Ann Howland to paper F. W. P., 1, with a view to see whether one signature could or could not have been traced from the other, and, if so, with what result.

Ans. I don't see any indication whatever of a tracing having been made here; the letters not being shaped alike, nor the spacing anywhere near correct. (Counsel for defendants request that it be noted that, while answering the question, the witness is looking at the enlarged photograph and rider, marked respectively, F. W. P., Photograph A, and F. W. P., Rider A.) I have examined them, each letter separately, the same time that I examined the others, about ten days ago—the first time. They did not cover at all, and there were no indications of tracing.

Int. 12. Supposing the signature to F. W. P., 15, to have been traced from the signature to F. W. P., 1, by being placed over the same, state whether or not any and what, and, if any, how many movements of the paper F. W. P., 15, would have to be made in order to place each letter and part of a letter of the signature to F. W. P., 15, over the corresponding letter in the signature to F. W. P., 1, in tracing.

(Objected to as above.)

Ans. I think that's a very difficult question to answer, inasmuch as very many of the letters, or parts of the letters, are shaped different. They are so unlike, I should say, that, in order to get the spacing correct, in the first place, there would be at least forty movements; I have made at least forty here. (The witness, in answering, holds the papers marked F. W. P., Photograph A, and F. W. P., Rider A.) And afterward, each letter would have had to have had great

changes made in them. I have answered that question so as to give as nearly a literal answer to the question as possible, of how many movements would have had to be made in order to get the
285 spacing, provided the same was a tracing. (After hearing the answer read, witness says:) I don't think I have anything more to say in answer to that question.

Int. 13. Assuming the signature of Sylvia Ann Howland to paper F. W. P., 1, to be genuine, state, from the examination which you have made of that signature, and of the signature Sylvia Ann Howland to papers F. W. P., 10, and F. W. P., 15, whether or not, in your opinion, said signatures to F. W. P., 10, and F. W. P., 15, are or are not genuine, and whether you have examined any and what other signatures of Sylvia Ann Howland, in forming or arriving at that opinion.

(Objected to as above.)

Ans. I should say they were genuine. I examined the blue papers marked R. C. P., 4, and R. C. P., 42, to see how the signatures of Sylvia Ann Howland to them covered. I also looked at a few of the blue papers marked R. C. P., and numbered. I see the pile of papers here. I cannot identify the ones I looked at. I only looked at the signature of Sylvia Ann Howland to these other papers, to see if they looked alike.

THURSDAY, *May* 2, 1867—2 p. m.

By adjournment from April 13, 1867, to await return of the witness from New York.

Cross-int. 1. Please state whether you have had any experience in making fac-similes of signatures other than that which you have stated in the commencement of your direct examination.

Ans. No.

Cross-int. 2. You have had no experience, then, in engraving fac-simile signatures, except for address cards?

Ans. Address and wedding cards, and invitations to parties. That's included in my business, I believe.

Cross-int. 3. Upon what occasion were you ever called upon, if at all, to examine handwriting, with a view to determining its genuineness?

Ans. I don't remember of ever being called upon.

Cross-int. 4. You have stated that you made examination of certain signatures marked respectively Walker, Fairbank, Palfrey, Wilde, Adams, and Spear, and remembered by the examiner. Will you say if you have any means of identifying the papers which you
286 so examined, and, if so, will you please to specify them, and state by what means you do identify them.

Ans. I have means of identifying them. I have my whole name or my initials upon each one that I—upon most of them. I identify papers marked Walker, F. W. P., and numbered respectfully 623, 582, 579, 575, 656, 669, 670, 679; also papers marked Fairbanks, F. W. P., and numbered respectively 2,365 and 1,423; also papers marked Palfrey, W. S. D., and numbered respectively 271, 238,

246, 265, 216 ; also papers marked Wilde, F. W. P., and numbered respectively 5, 35, 60, 8, 59, 3, 11, and 4 ; also papers marked Adams, F. W. P., and numbered respectively 12, 24, 49, 51, 58, and 20 ; also papers marked Spear, F. W. P., and numbered respectively 10, 45, 8, 43, 20, 5, 41, 33, 54 ; I identify all of these by my name or my initials upon them.

Cross-int. 5. Now state which of those papers you superposed and found to cover as F. W. P , 10, and F. W. P., 15, cover 1.

Ans. I don't know as I exactly understand the question. I found a number of each that I examined that cover as well as those you mention.

Cross-int. 6. Please repeat the question.

(The examiner does so.)

Ans. I found of the J. Q. Adams lot No. 24 matched with No. 49, covered as well as the best one, and that No. 51 with 58 did not cover as well as No. 10 does with No. 1, but better than 15 does with 1. Matching No. 20 with 12, it matched better than No. 15 does with No. 1. In the C. A. Walker lot, 623 matched with 656, as a whole better than the best one. I mean by "the best one" Sylvia Ann Howland; No. 10 matched with No. 1, that is to say, if I have got the numbers right. On looking at the originals, I find that I have got the numbers right. In the F. W. Palfrey lot, I found that No. 271 with 270 matched a great deal better than No. 15 with 1 ; 238 with 246 was better than 15 with 1. In the Wilde lot, No. 11 with 8 was nearly as good as No. 10 with 1 ; 4 with 3 was better than 15 with 1; 35 with 60 was better than 15 with 1. In the Joseph B. Spear's, I found that No. 45 covered with No. 10 better than 15 and 1, and in that same page there was some private mark, G. M., that covered very nearly exactly; the periods were exact. I believe I am wrong ; I believe it's papers 45 and 39 ; on looking, I find it is on papers 45 and 39 that the G. M. matched.

Cross-int. 7. You found no difficulty in superposing these
287 papers, any of them, against a window or a glass, to determine how they did match, did you ?

Ans. Yes. In some cases the papers were dirty, and thicker than others, some of them were, which made it—of course the thicker and dirtier the paper was, the more difficult it was to see through.

Cross-int. 8. In which of these papers did you find the difficulty so great as not to be able to form an intelligent opinion of how they matched ?

Ans. I didn't find any of them in that condition but what I was able to form an opinion.

Cross-int. 9. Which of them, if any, were in such condition that you couldn't, with your knowledge of the art, have traced one of them from the other ?

Ans. There were none of them but what I could have made a tracing of on a piece of thin tissue paper. I don't think there was any of them.

Cross-int. 10. So in examining these different papers, for the forma-

tion of the opinion which you have expressed, you were able to judge intelligently how well one of them covered the other?

Ans. Yes.

Cross-int. 11. Have you ever attended to the manufacture of paper at all, to observe the different materials of which it is made?

Ans. I have seen paper made.

Cross-int. 12. I mean, whether of linen or cotton?

Ans. No; I shouldn't be able to say that I knew enough about it. I simply know that the finer the pulp is ground, the freer it is from specks, and if made from white rags, the nicer will be the paper.

Cross-int. 13. Look at the piece of paper now shown you, and say if it is of the same kind as that on which documents 1, 10, and 15 are written.

(Plaintiff objects as not cross-examination upon matter opened by plaintiff, as leading, and because the witness does not appear to be qualified to give an opinion as to the qualities of paper. The witness answered, before the examiner had recorded and put the question: "I am not sufficient of a judge." Respondents' counsel, on hearing the objection, directs that the question be withdrawn and the following put: This record having been made and read, respondents' counsel says: Counsel for plaintiff objecting to the
288 qualification of their own witness to express an opinion upon this subject of the quality of paper, and its uses for the purposes of tracing and otherwise, counsel for respondents withdraw the question and proceed to another branch of the inquiry. Counsel for plaintiff desires the examiner to note that he has made no other objection than such as appears of record.)

Cross-int. 14. Is tracing considered one of the difficult branches of your art?

Ans. If you mean covering a piece of paper with a piece of tracing paper, I do not consider it so; but if you mean to trace from one piece of paper to another, without having first been prepared for the purpose, I should think it was.

Cross-int. 15. Well, that depends upon the thickness of the paper, doesn't it, and its texture otherwise?

Ans. Yes.

Cross-int. 16. Then, if you take a piece of paper where you can see distinctly, and judge intelligently and with precision how well one covers the other, you could trace one signature through the other paper, could you not?

Ans. I think a person of judgment and experience could do it. If you ask me if I could do it, I should say, yes.

Cross-int. 17. When you say that you could do it, you mean to say that you could make a good copy?

Ans. Yes, sir.

Cross-int. 13. Well, then, the accuracy with which it would be done would depend upon the degree of tact or skill which the party brought to the work.

Ans. Yes, sir.

Cross-int. 19. And yet the evidence that tracing had been at-

tempted might really be found in the signature imperfectly done, as if it were skilfully or nicely done?

Ans. I should think that there might be some evidence, certainly.

Cross-int. 20. To illustrate the idea, you have seen pupils and learners in the art of tracing make copies of signatures which you had no doubt were traced, although they lacked the precision and finish of the experienced tracer?

Ans. No, sir; I never did.

289 Cross-int. 21. Do you mean to say that you never saw any tracings by beginners that were imperfectly done?

Ans. I can't call to mind a single instance where any apprentices of mine did make a tracing of a signature. I always attend to that part of the business myself.

Cross-int. 22. Well, you have doubtless made some progress, I suppose, in the art, and there has been a time when you didn't trace as precisely and delicately as you now do, has there not?

Ans. Yes, sir.

Cross-int. 23. So that perfection is the result of some experience, is it?

Ans. Yes, sir.

Cross-int. 24. And yet the earlier tracings bore as distinctly the marks and evidence of being traced as the later, did they not?

Ans. Well, I never consider it much of a task to trace with tissue paper, the way we trace. It is enough sight easier to make a good tracing than a poor one. That is the way I look at it. No skill in making a good one.

Cross-int. 25. As the skill and experience of the tracer increase, the distinctive characteristics of the tracing become less apparent, do they not?

Ans. Well, that is a difficult question; we never try to trace exactly in our business; the matter of tracing from a drawing is very simple, and done more for spacing and general form of letters than for accuracy.

Cross-int. 26. Tracing, then, is not a difficult thing when you can see through the paper or other material on which the tracing is made the object or thing to be traced?

Ans. No, sir; not for an engraver.

Cross-int. 27. In the spacing between the words of a name and the syllables of the words, the departure of the words or parts of the words from a base line, curvature made by words or different parts of a word, what may be said to be the general structural effect, rather than in any very precise copying or shading of the letters, you would look for the evidence of tracing, would you not?

Ans. Certainly you would look at everything, if you were going to look for the evidence of tracing.

290 Cross-int. 28. The question is, to what features you would attach the greater importance?

Ans. Well, in my opinion, there is no difference between them. A tracing is a tracing. A man who can make a straight line can make a curve. My idea of a tracing is, a perfect tracing is an exact fac-

simile, otherwise it would not be a tracing. I should like to be allowed to look in a dictionary to see what that means.

Cross-int. 29. Suppose you do.

(Witness looks out the word "tracing" in Worcester's Dictionary, unabridged.)

Ans. (Reads:) "Fine arts. A mechanical copy of an original, made by following its lines through a transparent medium, as tracing paper."

Cross-int. 30. Well, don't you mean by your answer, really, if it were not perfectly traced, it would not be a perfect tracing, you do not mean that it would not be a tracing?

Ans. No, sir; I think, strickly speaking, a "tracing" is a perfect tracing, and any deviation from that is a copy.

Cross-int. 31. What you really mean to say in substance, then, is this, is it not: supposing the material on which the tracing is made to be so far transparent that you can see through it the object to be traced, as a signature, for example, the work of tracing is a comparatively easy and simple thing?

Ans. Yes, sir; for one that is in the engraving business, I should say that it is a very easy thing; a very simple matter.

Cross-int. 32. Mr. Lowell, please take the Spear papers, marked F. W. P., 45, and F. W. P., 39, and match the "M"s in the "G. M"s you referred to, independently of the rest of the paper, by themselves, as well as said "M"s can be matched, and then without allowing the paper to move, say whether the final periods are in superposition or not. You are particularly desired to match the "M"s with no reference to anything else.

Ans. They do not.

Cross-int. 33. Do the "G" s match, without changing the paper? State whether the "G"s match.

Ans. No, sir.

On hearing his deposition read, the witness stated that his
291 answer to the twelfth question of the direct ought to be corrected by striking out all in reference to spacings, and saying that, in order to make the whole cover correctly, forty movements or more would be necessary.

JOHN A. LOWELL.

Deposition of George Pye.

George Pye, of South Boston, aged thirty-four years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that his examination is made de bene esse, and without waiving any objection to the testimony produced by the respondents in regard to the genuineness of the signature Sylvia Ann Howland to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

I am now engaged as draughtsman, teaching in Mr. French's school, in Boston. I am a civil engineer and draughtsman by profession and

practice for the last nineteen years. I commenced in her Britannic Majesty's service, in the royal engineer department. I was there about ten years—over ten years. After leaving her Majesty's service, I came to St. John's, New Brunswick, and was deputy crown-lands surveyor for the province of New Brunswick, and city surveyor of St. John's for some years. I have been in the United States over four years, going on to five. I have been chiefly employed as a draughtsman since I have been here.

Int. 1. State whether or not, in the practice of your profession, you have had any and, if so, what experience in tracing?

Ans. I have had a great deal of tracing to do, both here and in Europe; and, in fact, in all places where I have practised my profession.

Int. 2. State what those tracings consist of.

Ans. They consist chiefly of topographical drawings and machinery, together with such writing as usually accompanies such drawings—is connected therewith.

Int. 3. State whether or not you have any, and, if so, what experience in the tracing of handwriting and signatures?

292 Ans. I have had a great deal of experience in tracing handwriting and signatures, such as would be attached to mechanical and other drawings.

Int. 4. Please look at the signature "Sylvia Ann Howland" to each of the papers F. W. P., 1, 10, and 15, now shown you by the examiner, and state whether or not you have made any, and, if so, what examination of them with reference to the question whether either of them was or was not made by tracing.

Ans. I have examined them, and I find—I am under the impression that they have not been traced.

Int. 5. Assuming said signature to F. W. P., 1, to be genuine, state whether or not, in your opinion, the said signatures to F. W. P , 10, and to F. W. P., 15, were or were not, either of them, made by tracing from said signature to F. W. P., 1.

(Objected to, on ground that witness has not shown himself qualified to testify on that question.)

Ans. I don't believe they were, sir; I cannot believe they were.

Int. 6. State why not.

(Objected to as above.)

Ans. From my experience in tracing, I have found it difficult, under ordinary circumstances, to make a correct tracing of written matter. In this case, the paper is much thicker than that ordinarily used, and I believe, with all my experience and practice, I would fail to make a correct copy under those circumstances. The method usually adopted in tracing is, to have or be supplied with tracing paper, or linen, transparent linen, and then, under those favorable, comparatively favorable circumstances, the workman finds it difficult to keep the tracing in place. For those reasons, and from the fact of the material used, I do not believe that those were traced.

Int. 7. Looking at said three signatures, state whether or not there are any, and if so, what appearances in said signatures to F. W. P., 10

and 15, which would or would not indicate that they were traced from said signature F. W. P., 1.

(Objected to as above.

Ans. In examining those tracings, I can make my meaning better understood by saying that I can feel better than I can express that they were not traced. And moreover, there is a characteristic about each that would be applicable to all. I do believe that characteristic would be defaced, in the event of tracing, particularly under existing disadvantages. I have never seen a tracing made by
293 a party other than the party who made the original, which didn't lose part of—didn't lose the expression that's peculiar to the writing of the individual who made the original, I mean.

Int. 8. What do you mean by the word "tracings" in the first line of your last answer?

Ans. I beg to correct that by saying "in examining those signatures;" I didn't mean to insert that.

(The witness here designates with his finger the words "those tracings.")

Int. 9. Look at the book shown you by the examiner, marked R. vs. M., F. W. P., and at the plate and paper in the pocket attached to the cover of said book, marked F. W. P., Photograph A, and F. W. P., Rider A, and at the plates in said book, and the papers in the pockets on the back of said plates, marked respectively F. W. P., Plate 1, and F. W. P., Plate 1, Rider 1, Rider 2, Rider 3, Rider 4, Rider 5; F. W. P., Plate 2, and F. W. P., Plate 2, Riders 1, 2, 3, 4, 5, 6, 7, 8; F. W. P., Plate 3, and F. W. P., Plate 3, Riders 1, 2, 3; F. W. P., Plate 4, and F. W. P., Plate 4, Riders 1, 2, 3; F. W. P., Plate 5, and F. W. P., Plate 5, Riders 1, 2; F. W. P., Plate 6, and F. W. P., Plate 6, Riders 1, 2; F. W. P., Plate 7, and F. W. P., Plate 7, Riders 1, 2, 3; F. W. P., Plate 8, F. W. P., Plate 8, Rider 1; F. W. P., Plate 9, F. W. P., Plate 9, Riders 1, 2, 3; F. W. P., Plate 10, F. W. P., Plate 10, Riders 1, 2, 3, 4; F. W. P., Plate 11, F. W. P., Plate 11, Riders 1, 2; F. W. P., Plate 12, F. W. P., Plate 12, Riders 1, 2, 3; F. W. P., Plate 13, F. W. P., Plate 13, Riders 1, 2; F. W. P., Plate 14, F. W. P., Plate 14, Riders 1, 2; and state whether or not you have made any and, if so, what examination of the signatures to those plates and papers, and also of any writing on any plate or paper over the signature Joseph B. Spear.

(Objected to as above and as immaterial, and as assuming facts not proved, to wit: The truth and character of unproved papers; as leading and incompetent, and because the examination of this witness to papers not verified by the proper party, compels the defendants unfairly to cross-examine without knowing the facts relative to the preparation of the papers.)

Ans. I scarce know how to answer the question. (The question being repeated, the witness says:) I yet don't know what answer to make to the question.

Int. 10. Placing the name "Sylvia Ann Howland," num-
294 bered 10 and 15 on said paper, marked F. W. P., Rider A, over the name "Sylvia Ann Howland," numbered 1, on said

F. W. P., Photograph A, state whether or not you have made any and, if so, what examination of the other signatures and writing referred to in the last question, of to see whether they would or would not cover, by superimposition different numbers, as well as said signatures 10 and 15, when severally placed over said signature 1.

(Objected to as before, and also as asking for opinions not the subject of expert testimony, but of unaided vision, and because the question relates to signatures of other persons than Sylvia Ann Howland.)

Ans. I have found that those signatures in the large book in some instances cover equally well, if not better; and as an evidence of tracing or copying, I would consider them more conclusive. I would refer to Plate 6 and Plate 4 and Plate 3, in this connection, particularly.

Cross-examination:

Cross-int. 1. What position did you hold in the royal engineers?

Ans. I was a civil assistant.

Cross-int. 2. With what rank?

Ans. That's all the rank. Assistants don't hold rank further than the title.

Cross-int. 3. What work did you do as assistant?

Ans. I was employed in the various duties connected with the topographical and trigonometrical survey of Ireland.

Cross-int. 4. What pay did you get?

Ans. I can't answer that question correctly, from the fact that my pay was progressive, according to merit.

Cross-int. 5. What did you get the last year?

Ans. I can't answer that; I don't remember.

Cross-int. 6. What did you get the first year?

Ans. I can't answer that for the same reason.

Cross-int. 7. How came you to leave the royal engineers?

Ans. I left there with the hope of bettering my circumstances in the land of my adoption.

Cross-int. 8. Was that the only reason?

Ans. I can best answer you that question by stating that my
295 relations were such that I hoped to better the circumstances of others as well as myself; and I may add that, but for them, I don't believe I would have left and come here. That's all the reason.

Cross-int. 9. What duty did you have on the New Brunswick survey?

Ans. I was merely appointed a deputy crown-lands surveyor for the province of New Brunswick, with authority to make surveys when called upon.

Cross-int. 10. How many years of that?

Ans. I think I was appointed in 1861 as a deputy crown-lands surveyor, and held that position till I came to the United States, about four years ago.

Cross-int. 11. Why did you come?

Ans. For the same reasons that induced me to leave the old country.

Cross-int. 12. What did you do the first year after coming to the United States, and where were you?

Ans. I had a letter, with introduction, from Judge Jackson, in Halifax, to Mr. Jonathan Amory, in State street, Boston, and he went about the city with me, and tried to find employment for me in my profession—surveying and engineering. Failing in that, I was obliged to take a situation as draughtsman, and was employed by Mr. Crooker, of the rolling mill, in the construction of his new rolling mill, known as the Bay State Rolling Mill; and, when through with him, I was employed by Mr. Harrison Loring, at the City Point Works. I left Mr. Loring, and went to work at the Globe Works, where I received more pay. I was there about three years. After I left the Globe Works (which are iron works) I went back to Mr. Loring. I have creditable testimonals for efficiency and attention to duty. From Mr. Loring I went to Messrs. Hoe and Company's establishment. Then I opened an office of my own in Washington street, and I still remain there.

Cross-int. 13. What pay do you get at French's school?

Ans. I don't get any pay from Mr. French.

Cross-int. 14. What work do you do there?

Ans. I have advertised myself as civil engineer, surveyor, and draughtsman, and am prepared to execute in that capacity any work which the public may be pleased to intrust to me.

296 Cross-int. 15. Have you done any work at French's school yet?

Ans. Yes.

Cross-int. 16. What?

Ans. I have taught drawing-school, a class, through the winter, and made two or three drawings for different parties—mechanical drawings.

Cross-int. 17. Was the class in mechanical drawing also?

Ans. Yes.

Cross-int. 18. What tracings have you done at French's?

Ans. I have made tracings of the drawings I executed there. One of them was an engine, known as the Washburn engine. The other work was drawings for boiler-settings and boilers.

Cross-int. 19. What tracing have you ever done except for mechanical duplicates?

Ans. In the topographical surveys of Ireland, after the surveys were plotted, they were then traced on tracing paper, and issued to examiners to insert local names, ornaments, and so forth; and of those I had, probably, thousands. I couldn't enumerate the number that passed through my hands while connected with the survey department in Ireland.

Cross-int. 20. You have done no tracings, then, except in connection with topographical and mechanical work.

Ans. Yes, I have. I have made tracings and drawings of archi-

tectural work, and such work as will come under a man's line of business.

Cross-int. 21. Please examine F. W. P., 1, and state whether, in your opinion, the signature was written by the same one that wrote the document?

(This and the following question put de bene.)

Ans. I think not.

Cross-int. 22. Compare the handwriting in the body of F. W. P., No. 1, with the body of F. W. P., No. 10, and say if it is by the same writer.

Ans. It might be the same writing, but if so, it has been written with a different pen. It might be the same party.

Cross-int. 23. Look at the words in No. 1, "also executor of the second page of this will," and say whether they were written at the same time with rest of the document, and by the same hand?

Ans. They look to be, in my opinion, by the same hand, but I question whether they be written at the same time. That is
297 from the fact of the difference in the ink. But, in my opinion, that might be from taking up a tent of ink in the pen. I have frequently noticed that in my own experience.

Cross-int. 24. What is your opinion about the point? What is your opinion about their being written at the same time?

Ans. I would prefer not to give an opinion in that case. It might or might not be.

Cross-int. 25. Examine the body of the writing, and see if you see any other words which you think were written at a different time from the rest.

Ans. I don't see anything that would strike my attention particularly, except the word "January," and that appears to have been written with darker ink.

Cross-int. 26. Was that word "January" written by a different hand from the rest of the document?

Ans. Not in my opinion. I believe not.

Cross-int. 27. Are you confident about it?

Ans. To the best of my opinion; that is all.

Cross-int. 28. I repeat the question.

Ans. I am as confident as I can be in giving an opinion; that is all.

Cross-int. 29. Was the word "eleventh" written at the same time as the word "January"?

Ans. In the former answer I was about to make reference to that "eleventh," or a portion of it, as having the appearance of being written with heavier ink. I would suppose it was written at the same time as the word "January," being a portion of the same document. There's a portion of the word "day," of the y in "day," that has the appearance of being written in heavier ink. It attracted my attention.

Cross-int. 30. Do you consider yourself an expert in the matter of handwriting?

Ans. I do not; but I have had considerable experience in tracing,

and so forth, and I have a very correct, or am reputed to have a correct, eye in regard to work.

Cross-int. 31. In tracing, how do you fasten the upper paper to the lower?

Ans. There are various modes of attaching the paper--
298 weights, gumming, and pins. Pins are the most common, called drawing-pins. The paper is pinned down at the corners, or wherever is most convenient.

Cross-int. 32. The correctness of the copy traced depends very much, does it not, upon the care and firmness with which the upper paper is attached to the lower?

Ans. Yes.

Cross-int. 33. Why, in your answer to the last interrogatory in chief did you not refer to the other plates, Fairbanks, Palfrey, Wilde, and Swett?

Ans. I referred to those as striking my sense as being better spaced, and more uniform in their appearance.

Cross-int. 34. Examine then, Plates 6, 4, and 3, and state what signatures you referred to in your last answer in chief.

Ans. In Plate 6, I referred to 52 and 27 and 20. I referred to 623 and 655 and 633, on Plate 4. In fact, I take them all—take them in general, as so much like each other. On Plate 3, there could scarce a doubt rest on my mind, that these were all made by the same hand, and yet there is a difference in regard to weight, the depth of the characters. I could instance 12 and 24 as showing a marked difference in regard to weight of characters. There appears to be a tremulousness in the handwriting of 58, but even with that the characteristic is such that a person would know it to be by the same hand.

Recess—1 to 2.

FRIDAY, *April* 26, 1867—9.30 a. m.

The testimony so far taken is now read to the witness, and his examination proceeds:

Cross-int. 35. In your answer to the tenth interrogatory in chief, you say that you would consider the signatures in the large book more conclusive as an evidence of tracing. State why you should.

Ans. In making a tracing, the sheet to be copied on is usually attached firmly to the original, and the party making the tracing endeavors to follow as near as possible the lines of matter to be traced, or characters to be traced. I would then say that those signatures were a better production, and consequently more conclusive.

299 Cross-int. 36. Then you mean to say that as two signatures approach a match, the evidence of tracing becomes more conclusive.

Ans. I do; when executed by a competent workman.

Cross-int. 37. Why?

Ans. Because he endeavors to follow the lines truly, to the best of his ability, if desirous of making a copy of the original.

Cross-int. 38. Might not one signature be accidentally like another, so that it would match?

Ans. Yes—yes.

Cross-int. 39. Did you ever see any two such?

Ans. I may have seen such, but have not actually tried other than those I have here tried; but I think it quite possible that they might; and I refer to the Adams signatures as likely to match. I mean the Adams signatures in the large book. I refer to them as being of the style and character of handwriting in which the signatures and the spacings are likely to be alike.

Cross-int. 40. In your answer to the thirty-eighth cross-question you have no other knowledge than what you derive from the book of photographs?

Ans. In my experience, I have repeatedly come across writing and signatures that, in my opinion, would have the same effect.

Cross-int. 41. I am not inquiring as to effect. Can you swear that you ever superposed two signatures and found them to match?

Ans. I cannot, unless where one was a copy of the other.

Cross-int. 42. A copy by tracing?

Ans. Yes.

GEORGE PYE.

Deposition of George Mathiot.

George Mathiot, of Washington county, District of Columbia, aged about forty-eight years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that his examination is to be made de bene esse, and without waiving any objection to the testimony produced by the respondents in regard
300 to the genuineness of the signature Sylvia Ann Howland to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any rights, are ready to proceed with the examination.)

Int. 1. Please state what your present occupation is, and how long you have been engaged in it.

Ans. I have charge of what is called the electrotype and photographic division of the United States Coast Survey office; I have been thus employed since 1850. The office is located at Washington.

Int. 2. In the division which you thus have charge of, what do you personally do?

Ans. I make photograph of tracings of plane-table sheets, and other photographs. I superintend the electrotype operations and conduct various electrical and other scientific processes.

Int. 3. What, if any, knowledge have you in regard to tracings and the making of tracings, and how have you acquired it? State fully.

Ans. I introduced into the United States Coast Survey the present practice of reducing plane-table sheets to the publication scale by the aid of tracings. I originated this method, and made numerous tracings with my own hands for my experimental investigations; I know the

quality of tracings, and am particularly interested in their appearance ; examine them daily almost, but still am not competent to make a good tracing. Tracing is a trade, to be learned only by capability combined with practice.

Int. 4. State about when you introduced this system of tracing into the coast survey.

Ans. The beginning of the experiments was about twelve years ago. The method was finally adopted by the office, I think about seven or eight years ago.

Int. 5. Since it has been adopted in the coast survey, how extensively has it been used there, and what, if any, portion of these tracings are examined by you?

Ans. Nearly all the reductions made in the office, by a corps of about twelve draughtsmen formerly employed, are now done by means of tracing. All these tracings are sent to me to be photographed, and I know the good or bad tracings immediately.

Int. 6. State what your knowledge of photography is, and how you have acquired it.

301 Ans. I began photographing in 1840. I have made investigations of the capacity of lenses for making true copies; have devised the means of making exact photographic copies. These investigations have been published in Senate documents, and various photographic journals.

Int. 7. Whether or not you give any, and if so, what personal attention to the photographing which is done in the coast survey, and how this has been while you have had charge of that division?

Ans. The photographing generally receives my personal attention. I have generally done the work with my own hands, but sometimes it has been done by my assistants.

Int. 8. Prior to being attached to the coast survey, whether or not you had any, and if so, what knowledge of handwriting, and how you acquired it?

Ans. I had no knowledge of handwriting prior to that, other than what I acquired by practice and the study of handwriting. I went to school to professed writing-masters.

Int. 9. Please look at the signature "Sylvia Ann Howland" to each of the papers F. W. P., 1, 10, and 15, now shown you by the examiner, and state whether you have made any, and, if so, what examination of those signatures, with reference to the question whether the said signatures to F. W. P., 10 and 15, were or were not made by tracing from said signatures to F. W. P., 1.

(Objected to as leading, and, in the present posture of the examination, immaterial.)

Ans. I have examined these signatures by superposing tracings of each other on the signatures. I have examined them also by means of enlarged transparent and opaque photographs. I pronounce 15 to be a writing, made with the pen, by the same hand that wrote No. 1. No. 10 I cannot say whether it is a writing or is not a writing, so far as the indications or marks of the pen on the original paper are discernible. By the superposition of the enlarged photographs,

I infer No. 10 to be a writing. This I infer from the preservation of the characteristics of the hand.

(Answer from "I pronounce" objected to by the respondents as irresponsive, and because the witness is not shown to be an expert as to the matters as to which the answer is given.)

Int. 10. From your knowledge of tracing, and looking at the character of the paper upon which said signatures last referred
302 to were written, state whether or not, in your judgment, the signature "Sylvia Ann Howland," to F. W. P., 1, could or could not be traced through said paper F. W. P., 10, or F. W. P., 15, and, if so, whether readily or with difficulty, and with or without any skill or experience as a tracer.

(Objected to as leading, and for substance.)

Ans. I think it possibly might have been done by an ingenious card-engraver, with his special appliances for tracing, but not by any person who had not united practice with great capabilities.

Int. 11. In your testimony as to the examination which you have made of those three signatures, you say that you examined them by superposing tracings; state why you did this, and whether or not you made any, and, if so, what examination or attempts at examination of said signatures, by superposing one over the other.

(Objected to for form and substance.)

Ans. I superposed the tracings on the signatures to test the quality of the tracings—accuracy, say. I superposed the signatures, one over the other, under the most favorable circumstances for tracing the one from the other, by placing one on the other on a pane of glass, putting a lighted lamp behind the pane of glass, and inspecting it with a magnifier.

Int. 12. In regard to the last part of your answer, state the result of your examination as to whether you could or could not, by thus superposing signatures, see accurately, or how otherwise, how one covered the other.

(Objected to as leading in form, and for substance.)

Ans. I could not tell whether I had coincidences in the lettering or no.

Int. 13. You say you superposed the tracings to test them. State how you found them to be.

(Objected to as above and as inquiry as to papers not produced before the examiner.)

Ans. I found the tracings of the signatures to be very accurate tracings.

(Respondents request the examiner to note that they will not proceed with the cross-examination of this witnes till these papers are produced.)

Int. 14. Look at the signature "Sylvia Ann Howland" to said papers F. W. P., 1, 10, and 15, and to plate marked F. W. P., Photograph A, and to F. W. P., Rider A, also the signatures J. Q. Adams to papers marked Adams, F. W. P., and numbered respectively 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101, and to Plate F. W.
303 P., 3, and to Riders 1, 2, 3; to Plate F. W. P., 3, in the large

book marked R. vs. M., F. W. P., and state whether you have made any, and, if so, what examination, by superposing the signatures "Sylvia Ann Howland," 10 and 15, respectively, over 1, and by superposing the signatures "J. Q. Adams" over each other, to see how they compare with each other as to covering, and with what result. If, in making your examination, you have made any minutes, you are at liberty to refer to the same in giving your answer, to refresh your memory, if necessary. Please give details in answering.

(Objected to as leading in form; so far as it refers to what purport to be signatures of any other person than Sylvia Ann Howland, immaterial; so far as it refers to any photographs or papers produced as photographs, examination upon papers of the genuineness of which no evidence has been offered; so far as it relates to purported signatures of J. Q. Adams, examination upon signatures of the genuineness of which no sufficient evidence has been produced; and as calling for evidence which in substance is incompetent and immaterial.)

Ans. I have superposed the three Sylvia Ann Howland signatures. I recognize all the J. Q. Adams signatures here as having been examined by me, with the exception of No. 54 and 80. (The question being repeated, the witness answers:) I think I have already answered as to the Sylvia Ann Howland signatures. I have also superposed the J. Q. Adams signatures, under what I conceive would be the most favorable circumstances for producing one from the other by tracing, and conclude that it would have been impossible to have thus produced one from another—any one from any other. (Answer to this point objected to by respondents, because it does not appear that the witness might not have answered without referring to his notes.) I have also examined F. W. P., Photograph A. Now it is the result of that examination is the point, is it not? (The magistrate thereupon reads the question from "to see how" to the end, and the witness goes on:) I do not find in my notes any memorandum of examination of Photograph A, by means of Rider A. I answer, from memory of the examination, that the three signatures resemble each other too closely to have been produced, one from the other, by writing with a pen in the manner of tracing on the papers of 1, 10, and 15, respectively, by an inexperienced person, or by any person without long practice in the imitation of handwritings. (The witness now asks, Have I answered in relation to the J. Q. Adams signatures? And the examiner reads him what he has answered in regard to them.) I have further examined the J. Q. Adams
304 signatures by their enlarged photographs and riders. I consider many of these signatures as covering the same ground as another far better than any of the three signatures in F. W. P., 1, 10, and 15, cover the same ground, and are far more liable to contain tracings (objected to, by respondents, as reading from a book) so far as may be inferred from two or more covering the same ground, than any in the F. W. P., 1, 10, and 15. I find 84 covers 49 better than in the F. W. P.s. That's the way I distinguish those originals.

(Respondents desire to ask the witness, at this stage, whether he is reading from minutes—that appearing to be what the witness is

doing. Plaintiff objects to any such question being put at this stage of the examination, as tending to interrupt the witness, and as proper inquiry for cross-examination.)

Recess—1 to 2.

(The examiner rules that the question is proper, and puts it. The witness replies:) I am not reading, but looking at and refreshing my memory from memoranda that I made at the time I made the examination. (Counsel for respondents desire it noted that the witness, when he was asked whether he was reading from mintutes, replied that he was. The examiner notes that this was so. but that the witness immediately corrected himself, and answered as above.) Now I will continue the answer: 84 covers 24 as well as in the F. W. P.s 15 covers 1, and 49 covers 84 as well as F. W. P., 15, covers F. W. P., 1, and I continue further that this reciprocation in covering does not extend to the F. W. P.s. 12 Adams covers 101 better than F. W. P., 10, covers F. W. P., 1. 24 covers 49 as well as the F. W. P.,10, covers 1. 51 covers 58 as well as F. W. P., 10, covers 1. 83 covers 7 and 7 covers 83 nearly as well as the F. W. P., 10, covers 1, and far better than F. W. P., 15, covers 1. I have measured those enlarged photographs for distortion in the process of enlargement, and don't find that any exists. The large Adams, I mean. I also find the riders of the same size as the fixed photographs. I continue further, that I find in these Adams signatures greater similarity to each other than exists in the three Howland F. W. P.s.

Int. 15. Please look at the signature C. A. Walker to the papers marked Walker, F. W. P., and numbered respectively 623, 633, 555, 579, 575, 623a, 656, 679, 670, 669, 582, and to plate and riders
305 in the book marked F. W. P., Plate 4, and F. W. P., Plate 4, Riders 1, 2, 3, and state whether you have made any and, if any, what comparison as to covering, in reference to the signatures Sylvia Ann Howland, referred to in the last question. State in detail.

(Objected to as to form, so far as it applies to the signatures of a person other than Sylvia Ann Howland as immaterial; and because the witness does not show himself to be an expert.)

Ans. I have examined all these signatures, by superposing them in favorable circumstances for tracing. I have also examined the photographs and riders now shown me, and tested them, for uniformity, in the scales, to expansion, and examined the original signatures by means of these riders and photographs. I find similarities in the signatures greater than in the Howlands F. W. P.s, 15, 10, and 1, and conclude that no person, not even a practised tracer, could have produced these similarities by tracing through the thick paper of the originals. I particularly note the following as covering as well as in the F. W. P.s 10 covers 1: 679 as covering 669, 679 covers 670, 670 covers 669, 669 covers 679, 582 covers 575, 575 covers 582, 575 covers 579. And I more particulary note 623a covers 656 greatly better than Howland, F. W. P., 10, covers 1. 623a covers both 623, 655, and 633, as in the F. W. P.s 15 covers 1.

Int. 16. Please look at the signature Joseph B. Spear and the writing "Very respectfully" and "Your obedient servant," to the papers marked Spear, F. W. P., and numbered respectively 10, 45, 39, 54, 33, 34, 26, 8, 5, 41, 24, 52, 27, 49, 20, 6, 43, 35, 44, and to the plates and riders in said book, marked F. W. P., Plate 5, F. W. P., Plate 5, Riders 1, 2, and F. W. P., Plate 6, F. W. P., Plate 6, Riders 1, 2, and F. W. P., Plate 7, F. W. P., Plate 7, Riders 1, 2, 3, and state whether you have made any, and, if any, what comparison as to covering, in reference to the signature Sylvia Ann Howland, referred to in the preceding questions. State in detail.

(Objected to as last above.)

Ans. I state that I have examined all these signatures and their enlarged photographs and riders—have tested the riders and fixed photographs for uniformity of enlargement, and found them correct. I have superposed the signatures under favorable circumstances for tracing them. I further examined them by means of their en-
306 larged photographs and riders. I find greater coincidences here than in the Howland signatures F. W. P., 1, 10, and 15. I find here, frequently, the names not only coinciding as well as in the Howlands, F. W. P., 1, 10, and 15, but at the same time the complimentary preceding the names along with the name coinciding. I do not consider that any practised hand, even the copier of autographs, could produce such remarkable similarity through the paper of the originals by tracing—39 is more like 10 on Plate 5, than in F. W. P.,—10 is like 1; 45 is like 10, as much as 10, F. W. P. is like 1, 45 covers 5 and also 24; and both coverings are as good as in the F. W. P.s 10 is of 1. On Plate 6, 52 covers 27, and 52 covers 20—I should have said these—I confused the two things—52 covers 27 in the name; 52 covers 20 at the same time, both in "Very respectfully" and in the name better than in the F. W. P.s, the 10 covers the 1; 49 covers 35 both in the complimentary and in the name at the same time. At the same time is better than in the F. W. P.s, the 15 covers 1; 43 covers 20 in the "Very respectfully" better than in the F. W. P.s, 10 covers 1. Now I'll go to Plate 7: In Plate 7, in 33, "Your obedient servant" covers the same in 8, better than in the F. W. P.s, 10 covers 1; 33 covers 26 in the whole, both the complimentary and name, at the same time, better than in the F. W. P.s, 15 covers 1. In 33, the name covers 26 as well as in the Howlands, F. W. P. 10 covers 1. In 6, "Very respectfully" covers the same ground as the same words in 34. The similarity is greater than in the F. W. P.s, between 15 and 1; 34 covers 6 as well as in the F. W. P.s, 15 covers 1; in 44, "Your obedient servant" covers almost exactly the same ground as in 35. The covering is greatly better than in the Howlands F. W. P.s, 10 is than 1.

Int. 17. Please look at the signature Stephen Fairbanks, to the papers marked Fairbanks, F. W. P., and numbered respectively 2,061, 2,021, 1,682, 2,074, 422, 272, and to the plates and riders in the book marked F. W. P., Plate 8, F. W. P., Plate 8, Rider 1, and F. W. P., Plate 9, and F. W. P., Plate 9, Riders 1, 2, 3, and state whether

you have made any and, if any, what comparison as to covering in reference to the signatures Sylvia Ann Howland referred to in the previous questions. State in detail.

(Same objection as to the fourteenth interrogatory.)

Ans. I have examined these signatures Stephen Fairbanks, also their enlarged photographs and riders. I have tested the
307 photographs for correct enlargement, and the riders for correspondence with the photographs. I have superposed the signatures under favorable circumstances for tracing them, and further examined them by means of the enlarged photographs and riders. I do not think any person could produce such imitations—please use the word similarities instead of imitations. I do not believe any person could produce such similarities by tracing one from another on the paper of the checks. Many of these signatures cover the same ground better than in the Howland F. W. P.s 15 covers 1, and would cover better than 10 covers 1, where the rider would be written in a heavier hand, the covering, please say, of Howland, No. 10, F. W. P., No. 10. In these signatures, the coincidences are not only in the forms of the letters—not only in the covering—but in the forms of the letters and in their spacings. 2,061 covers 2,021 as well as Howland, F. W. P., 15 covers 1; 1,682 covers 2,074 as well as in the Howlands, F. W. P., 15 covers 1. Moreover, in the F. W. P. covering of 15 to 1, there are radical differences in the formation of the letters which do not appear in the Fairbanks covering. On Plate 9, I specify also the following as covering, as well as in the F. W. P.s 15 covers 1: 2,155 as thus covering 1,860, 822 as thus covering 243, 740 as thus covering 1,838, 619 as thus covering 312, 1,660 as thus covering 2,203.

Int. 18. Please look at the signature, Saml. W. Swett, to the papers marked Swett, F. W. P., and numbered respectively 152 and 29, and to the plate and riders in the large book, marked F. W. P., Plate 10, and F. W. P., Plate 10, Riders 1, 2, 3, 4. and state whether you have made any, and, if any, what comparison as to covering, in reference to the signatures Sylvia Ann Howland, referred to in the previous questions. State in detail.

(Same objection as to the fifteenth interrogatory.)

Ans. I have examined these signatures, Saml. W. Swett, Nos. 29 and 152. I have examined them by means of their enlarged photographs and riders. I have tested the photographs and riders, for equality in enlargement, and find them perfect. I conclude that 152 covers 29 as well as in the F. W. P.s 10 covers 1, and better than 15 covers 1. I also find 29 covering 152 as well as the F. W. P., 15, covers 1.

Int. 19. Please look at the signature, F. W. Palfrey, to the papers marked Palfrey, W. S. D., and numbered respectively 270,
308 274, 279, 282, 163, 214, 218, 159, 174, 271, 171, 170 246, and to the plates and riders in the book, marked F. W. P., Plate 11, F. W. P., Plate 11, Riders 1, 2, and F. W. P., Plate 12, F. W. P., Plate 12, Riders 1, 2, 3, and state whether you have made

any, and, if any, what comparison as to covering, in reference to the signatures Sylvia Ann Howland referred to in the previous questions. State in detail.

(Same objection as to last question.)

Ans. I have examined those signatures; I have also examined their enlarged photographs and riders, and tested the photographs and riders for equality in enlargement, and find them perfect. I find on Plate 11, 246 covers 238 full as well or better than in the Howlands F. W. P.s 10 covers 1; 238 covers 270, I think, as well as in the Howlands F. W. P.s 10 covers 1. The spacings and forms of the letters are more similar than in the Howlands F. W. P.s, 10 to 1. I find also that No. 270 covers No. 271, and 171 covers 170, both coverings better than, in the F. W. P., Howlands, 15 is to 1. I will say also covers better as a tracing than the 10 covers—the F. W. P., 10, Howlands, covers 1; for in these 171 has everything of 170, but the F. W. P , Howland 10, has not the same marks as 1. On Plate 12, 282 covers 279 and 274 as well as in the F. W. P., Howlands, 15 covers 1; 163 covers 214, I think, as well as, in the F. W. P., Howlands, the 10 covers the 1. Here I want to remark that by "covering" I mean representing the form and the size, as a tracing of a drawing thus represents it. I do not mean obscuring or hiding without preserving the forms. Such obscuring or hiding I conceive is the assumed covering of F. W. P., 10 to 1.

Int. 20. Please look at the signature Geo. C. Wilde to the papers marked Wilde, F. W. P., and numbered respectively 35, 60, 29, 44, 11, 8, 59, 3, 4, and to the plates and riders in the book, marked F. W. P., Plate 13, F. W. P., Plate 13, Riders 1, 2, and F. W. P., Plate 14, F. W. P., Plate 14, Riders 1, 2, and state whether you have made any, and, if any, what comparison as to covering in reference to the signatures Sylvia Ann Howland referred to in the previous questions. State in detail.

(Same objection as to last question.)

Ans. I have examined these signatures, also their enlarged photographs and riders; tested the photographs and riders for equality of enlargement, and find them perfect. I compare these signatures by their enlarged photographs, and find, on Plate 13, 11 covers
309 the same ground as 8, as well as, in the F. W. P., Howlands, the 10 covers 1. I find also 35 covers 8, as well as the F. W. P., Howlands, 15 covers 1; and 35 covers 60, 35 covers 8, and 27 covers 8. These three, as well as the Howlands 15 and 1. On Plate 14, 3 covers 4, and 4 covers 3, as well as the F. W. P., Howlands, 15 covers 1; and 44 covers 29, I think, as well as the F. W. P., Howlands, 10 covers 1. I wish to remark again that by "covering" I mean occupying the same space, and not hiding from view. I do not mean "hiding from view" by the word covering.

4.45 p. m.—Adjourned to 9.30 a. m., Saturday, April 27, 1867.

SATURDAY, *April* 27, 1867—9.30 a. m.

Int. 21. State whether or not there is any, and if so, what method or means of affixing a photographic print to a firm, stiff surface like a pasteboard, without varying or distorting the print in any way.

(Objected to as immaterial.)

Ans. Yes, sir; all photographers in the world know that photographs can be mounted or put down without distortion by means of India-rubber varnish, paste.

Int. 22. Please state whether or not you have examined the photographs mounted on plates marked F. W. P., and numbered from 3 to 14, inclusive, to see whether the photographic prints have or have not been distorted in mounting; and if so, with what result.

(Objected to, because it is an inquiry as to documents which have not been put in proof or identified.)

Ans. Yes, sir; I examined these plates as I examined the photographs; I examined them for distortion and otherwise. My recollection is, (the witness states, on hearing the examiner read the last sentence,) that I stated that I examined them for distortion or otherwise. I found them true photographs, correctly mounted.

Int. 23. Look at the bill of sale marked R. C. P., 36, and the tracing marked F. W. P., R. C. P., 36, now shown you by the examiner, and state whether you have made any, and if so, what examination by placing the tracing over the signature Sylvia Ann How-
310 land to the bill of sale.

(Plaintiff's counsel here says to witness, that if he has any memoranda in relation to any such examination made by himself, he may refer to the same to refresh his remembrance, if he desires to, but not read from them.

Respondents object to the suggestion, because the question is one to be determined, if at all, by personal inspection of the papers made at this time, and because the witness appeared to them to be reading from his notes yesterday. They object to the question, first, that the witness is not proved to be, and is not, in fact, an expert in tracing, nor upon the evidence does it appear that he claims to be an expert upon the matter of the tracing of handwriting and signatures; second, because it is an inquiry of the witness as to papers the origin of which is not shown, and which have not been put in proof.)

Ans. Now? Answer now? (Examiner says, Yes.) Now I state that I claim to be a judge of all kinds of tracings, including tracings of handwriting. (Respondents object to the foregoing as irresponsive to the question.) That I have compared—I have compared; I should state the tracing with the bill of sale now shown me, and find it an excellent copy.

Int. 24. Please look at bills of sale, marked R. C. P., and numbered respectively 15, 32, 18, 24, 9, and at the tracing marked F. W. P., R. C. P., and numbered respectively 15, 32, 18, 24, 9, and state whether or not you have made any, and if so, what examination, by placing each tracing over the signature Sylvia Ann Howland, to

the bill of sale, corresponding in number with the number of the tracing.

(Objected to as above, excepting so far as the claim of the witness is concerned.)

Ans. I examined these tracings by superposing the tracing over the signatures to the various bills of sale corresponding to the numbers of the tracings, and examining with the magnifier, and find them all to be excellent tracings.

Int. 25. Please look at the papers F. W. P., 1, 10, and 15, and the tracings marked F. W. P., 1, X—F. W. P., 10, X—F. W. P., 15, X, now shown you by the examiner, and state whether or not you have made any, and, if so, what examination, by placing each tracing over the signature Sylvia Ann Howland, on the paper corresponding in number with the number of the tracing.

(Objected to as before.)

311 Ans. I have placed the tracings numbered 1, 10, and 15, over the signatures on the papers 1, 10, and 15, or marked 1, 10, and 15. I have examined the tracings, with a magnifier, and I find them to be excellent copies.

Int. 26. In the first part of your answer to the ninth interrogatory, in answer to a question as to any examination which you had made of the signature Sylvia Ann Howland to papers 1, 10, and 15, you say you "have examined these signatures by superposing tracings." Please state what tracings you refer to.

(Objected to as above.)

Ans. I refer to the tracings now before me, F. W. P., 1, X, F. W. P., 15, X. [I compared the signatures on the papers F. W. P., 1, 10, and 15, by putting the tracing of one signature of Sylvia Ann Howland over another signature of Sylvia Ann Howland, and concluded that one could not have been derived from another by any process of tracing] (On hearing his answer read, which was done at the request of counsel for respondents, witness says:) I said, I refer to the tracings F. W. P., 1, X, F, W, P., 10, X, F. W. P., 15, X. I am positive I put in F. W. P., 10, X. [Bracketed portion of answer objected to, by respondents, as irresponsive.]

Int. 27. Please look at the photographic print, marked F. W. P., George Mathiot, now shown you by the examiner, and state whether or not you have made any, and, if so, what examination by superposing the signatures Sylvia Ann Howland on said print over the signatures Sylvia Ann Howland on said papers F. W. P., 1, 10, and 15, and with what result.

(Objection, as examination on papers not identified or put in proof.)

Ans. I have superposed the photograph now shown me, marked F. W. P., George Mathiot, on the signatures in the original papers, known as F. W. P., 1, F. W. P., 10, and F. W. P., 15. On examination with the magnifier, I find that these photographs of the signatures, or purported photographs of the signatures, differ from the signatures in what engineers know as not being of the same scale. I found the tracings before referred to as having been placed over the

signatures on the originals, to be much more accurate copies as to scale.

Int. 28. Please look at the plates in said book, R. vs. M., F. W. P., numbered 13, 14, 11, 12, and 4, and state whether or not you have made any, and, if so, what and how careful an examination, and by what method or means, of the photographic signatures on
312 those plates, with reference to the accuracy of the scale of enlargement. State the details fully.

(Objected to as leading; so far as it refers to any signatures or photographs of signatures other than those of Sylvia Ann Howland, immaterial; so far as it relates to any papers purporting to be photographs, as examination upon papers not put in proof.)

Ans. I examined the plates in the book now referred to, for uniformity of enlargement, by taking the various photographic prints and comparing a part in the centre with the original, and comparing a part in the upper or lower part of the print with the original. The examination was very careful, very long, and very tedious, and if I give it fully, I think it will be longer and more tedious. I made various measurements through the plates referred to. I have not memorandums of all the measurements, but I made fully enough to satisfy me that the enlargement has been uniform in these photographs. The method I used is that universally employed by engineers in testing for uniformity of scale. From my memory and notes together, I can refer to the original G. C. Wilde, No. 59, and its enlarged photograph on Plate 13. I used the metric scale and dividers in making the measurements. The scale I used was one—is one, please say—used daily by the principal draughtsman in the United States Coast Survey Office. It is used by him daily in making tracings. I borrowed it from him an hour before I left Washington for Boston. (Respondents object to character of answer as irresponsive and immaterial.) He objected to letting me take it away; he said it was the best scale he had ever had, and feared I might lose it. (Respondents object to this part of the answer as mere hearsay.) I relate this concerning the quality of the scale, to show the quality of the instrument I used; I used the metre or French measure in these measurements, because I am not familiar with any other measure; I found the original Geo. C. Wilde, No. 59, to measure four hundred and twenty decimilimetres, and the enlarged copy to measure a thousand three hundred and one decimilimetres. No. 35, original Geo. C. Wilde, I found four hundred seventy-five decimilimetres, and the enlarged photograph in the middle of the sheet, the photograph marked 35, I found a thousand four hundred and sixty-one decimilimetres. The ratio of the two originals to the enlargement is the same, within the limits of error; I therefore conclude that the centre and periphery of the sheet has been expanded alike by the lens. Upon Plate 11
313 is a photograph of original Palfrey. I find the original, No. 271, measures five hundred and thirteen decimilimetres, and the enlarged photograph measures fifteen hundred and seventy-one decimilimetres. (Symbol for this is dmm.) Original Palfrey, signature,

No. 246, measures five hundred and one dmm., and its enlarged photograph measures fifteen hundred and fifty-one dmm. These measures show uniformity of enlargement. Original Walker signature, Reg. 656, measures three hundred and ninety-seven dmm., and its enlarged photograph on Plate 4 measures a thousand two hundred and eleven dmm. Original Walker, 633, Rect. 633, measures three hundred and eighty-seven dmm., and its enlarged photograph, at the bottom of the print on Plate 4, measures eleven hundred and eighty dmm. These are only a few of the numerous measurements I made, and throughout this book of the plates referred to in the question, and I inferred in every case that the enlargements were uniform.

Int. 29. Please look at the signature Sylvia Ann Howland to the bills of sale marked R. C. P., 4, and R. C. P., 47, and on plate and riders marked F. W. P., Plate 24, and F. W. P., Plate 24, Riders 1, 2, and state whether or not you have made any, and, if so, what examination to test the accuracy of the said photographic plate and riders, and with what result.

(Objected to as above.)

Ans. I have examined these signatures and Plate 24 and riders. I tested the photographs on Plate 24 in the upper and middle parts of the sheet, as before referred to in other testings. Original Sylvia Ann Howland on R. C. P., 47, measures six hundred and five dmm., and its enlarged photograph measures eighteen hundred and one dmm. Original signature Sylvia Ann Howland, R. C. P., 4, measures six hundred and three dmm. and its enlarged photograph on Plate 24 measures seventeen hundred and ninety dmm. I therefore conclude that the two have been expanded alike in enlargement. I continue in the question. I have compared the photographs with the riders for size, and find them the same size.

Int. 30. Please look at the signatures Sylvia Ann Howland on said plate and riders, and state whether or not you have made any, and, if so, what examination or comparison as to covering with the signatures Sylvia Ann Howland on plate and rider marked F. W. P., Photograph A, F. W. P., Rider A.

(Objected to as above.)

314 Ans. I have compared the signatures on Plate 24; the photographs on Plate 24. I have also done the same by covering the photographs of F. W. P., Photograph A, and conclude that on Plate 24, 4 covers 42 better than in F. W. P., Photograph A, 15 covers one. Photograph 4 is more like 42 than in F. W. P., Photograph A, 15 is like 1. All the letters in 4 are like the same letters in 42, but in F. W. P., Photograph A, some of the letters are not the same in 15 as they are in 1. I consider Phograph 4 to resemble 42 in the way that a tracing resembles far more than in F. W. P., Photograph A, 15 resembles 1. So far as sameness in the formation of the letters, 4 resembles 42 more than in F. W. P., Photograph A—I recall the words "more than"—I am getting confused—I substitute the words as well as in F. W. P., Photograph A, 10 resembles 1, for in 10 all the letters are not of the same form as in 1.

Int. 31. Please look at the books now shown you. (The witness

here says: I have got over-fatigued. It occurs to me that I have not answered the question; and he continues his answer to question thirty as follows:) Here, also, 44 covers 23 about as well as, in the F. W. P., Photograph A. 15 covers 1. 15 of Rider 2, Plate 24, covers 41 about as well as, in F. W. P., Photograph A, 15 covers 1. 15 of Rider 2, F. W. P., Plate 24, covers 14 better, in length, spacing and form of letters than, in F. W. P., Photograph A, 26 covers 23. I think about as well as, in F. W. P., Photograph A, 15 covers 1.

Int. 31. Please look at the two books now shown you by the examiner, marked R. C. P., Book 1, Volume 1, and R. C. P., Book 1, Volume 2, and state whether or not you have made any, and, if so, what examination of these volumes and their contents, and where, and with what results as to the character and accuracy of the work. State fully and in detail.

(Objected to for form and substance.)

Ans. I examined the contents of these two books for uniformity in scales of the enlargement of the photographs, and for conformity between the riders and the photographs. I made the examination at the office of the clerk of the United States circuit court, Boston. I have the date down in my memorandum book as April 25, 1867; but I may be wrong in the date, for I have lost the run of the calendar since I have been here. In Book 1, Volume 1, Plate 14, I made testings for uniformity of expansion of the rider and photograph.

In signature 36, I find the opaque to measure seven hundred
315 and seven dmm. The rider measures only seven hundred dmm.

This difference is more than the down-stroke—width of the down-stroke, I mean—in the final d. I made this measurement from the lower left curve in the s, to the extreme right of the false ascending right curve (false loop) in the final d. The rider is, in the 36, about six dmm. smaller than the original signature. In No. 15 of these photographs the rider is about the same amount smaller than the opaque photograph, and about the same amount, also, smaller than the original photograph. I made a mistake there when I said original photograph. I should have said original signature. In 32, the rider is too small by the same amount or a little more. The photograph is with the preceding in the original. The photograph as above with the original. In 47 photograph, opaque photograph, is eight dmm. larger than original, and the rider is six dmm. larger than the original. Six dmm. is about the thickness of the down-stroke in the final d. In second group from the bottom, and containing signatures numbers 24, 29, 28, and others, the rider is about five dmm. smaller than the photograph—the opaque photograph. In the second group from the top of the page, the opaque photograph is about fifteen dmm. longer than the original signature. This is more than half the size of the small letters of the word. The rider of this group is only about half this quantity too large. In the top group, signature 9 is too large by about fourteen dmm. The rider of this group is only about ten dmm. too large. In Book 1, Volume 2, Plate 1, Figure 2, photograph of signature Sylvia Ann Howland, is eleven dmm. larger than the orignal. [I made my quotation wrong as to the volume.

It should have been Book 1, Volume 1, instead of Volume 2.] (The part in brackets spoken after the witness had referred to the books.) In Figure 4, the photograph of signature of Sylvia Ann Howland is ten dmm. longer than the original signature.

1.35 p. m.—Adjourned to Monday, April 29, 1867, 10 a. m.

MONDAY, *April* 29, 1867—10 a. m.

Now, I believe the question refers to Book 1, Volume 1, Plate 15. I answer, on this Plate 15, I find a photograph about sixteen inches long. This photograph I consider necessarily distorted by
316 being—from being of so large a size. I know of no lens which will make a true photograph of this size, or accurate enough for the purpose of comparing lines by coverings. For the purpose of testing the accuracy, I selected lines numbered 15 and 36 on this plate, and compared them by measurement with signatures on bills of sale before certified by me. The original signature of No. 15 measures six hundred and forty-three dmm. The same part on the enlarged photograph measures two thousand and fifteen dmm. The ratio is three hundred and thirteen (313.) Original signature on bill of sale of 36, measures six hundred and seventy-eight (678) dmm. The enlarged photograph measures two thousand one hundred and thirty-five (2,135.) The ratio is three hundred and eleven (311.) Here is a difference of one (1) to one hundred and fifty (150) in the ratio of the two enlargements. This difference of ratio of one one-hundred-and fiftieth ($\frac{1}{150}$) part of an inch in one inch is more than the thickness of a line in ordinary writings I consider this photograph, therefore, and its rider, as being of no value for the comparing of hand-writings. In some of these photographs, I think the distortion produced by the lens will amount to more than the thickness of the heavy part of the letters in the length of the signatures. If Photographs 16, 17, and 18 of this same book and volume were made with the same lens with which Plate 15 was made, then they are equally unreliable with Plate 15. In Book 1, Volume 11, Plate 14, the rider does not cover the names, in some instances, by more than the width of the heavy part of the line. In Plate 15, of this same book and volume, also, the rider is too small. In Plate 16, the rider is too small. In Plate 17, the separate riders cover better than in the preceding plates of this book, but is not a true cover. Plate 18 is also better, but is too much out to show identity of lines. The discrepancy in size between the rider and the photograph will be delusive in comparing the writings on these three best plates of this book and volume. In envelope No. 3 of this same book and volume, I find photographic copies of the—of what is known as the Howland wills here. On envelope No. 3 is written "exact dimensions of Nos. 1, 10, and 15, F. W. P., photographed from the originals." Photograph 8, R. C. P., found in envelope No. 3, differs from original, F. W. P., 1, as appears in the following measurements: Original paper measures, length of bottom line—say edge instead of line—sixteen hundred seventy-two
317 (1,672) dmm. Top edge, sixteen hundred eighty-eight, (1,688;)

left-hand edge, twenty twenty-three (2023.) I made a mis take, I should have said twenty twenty-six (2026.) Right-hand edge, twenty twenty-three (2023.) The photograph, bottom edge, sixteen fifty-one (1651;) top edge, sixteen sixty-six (1666;) left-hand edge, two thousand (2,000;) right-hand edge, two thousand and two (2,002.) I made these measurements at the clerk's office of United States circuit court, Boston, the 24th of April, 1867 The differences between these photographs and their originals, of which they claim to be the exact size, is generally about twenty (20) dmm. This amount is, in English measures, nearly the twelfth of one inch, and shows the inaccuracy, generally, of these books and volumes. [It shows not only that proper apparatus and ordinary care was not used in preparing the photographs, or that gross carelessness or ignorance did not obtain better results.] (Part in brackets objected to by respondents as irresponsive and impertinent.) I will now continue, that I may not appear to speak disrespectfully or harshly. (Counsel for respondents here says the word "impertinent" was used as meaning "not belonging to the case.") I will use "want of knowledge," instead of "ignorance." In same envelope, No. 3, R. C. P., Photograph 9 is too small, as follows: Compared with the original paper F. W. P., 15, by the measurements I made, there is generally a difference as before of about one-twelfth ($\frac{1}{12}$) of an inch. In same envelope, No. 3, R. C. P., Photograph 10 differs also from the original by my measurements, as in the former cases, one-twelfth ($\frac{1}{12}$) of an inch. In Book 1, Volume 2, Plates 12 and 13 are photographs of measuring scales, with riders. These scales, as photographed here, are excellent exhibitions of the inaccuracy of the photographic methods employed in these books and volumes. By measuring the scales among themselves, and by means of their riders, I find variations amounting to a whole division of the scales. In some instances, the variation is as much as the fiftieth of an inch in three inches. This is a variation of as much as the width of a heavy line in the writing of those signatures. I judged of the measures in inches and parts of inches from the engine divided paper scales from which these photographs were taken. In same book and volume is an enlarged photograph, Plate 5, and rider of the—of what I take to be—say of what I take to be the three Howland will
318 signatures. I compared these signatures with their rider. The riders are nearly the length of the signatures. I should have said "these photographs," instead of "the signatures." I made my comparison of the three will signatures among themselves by means of this plate and rider, by placing 10 and 15, respectively, over 1; I also compared the plate and rider with F. W. P., Photograph A, and the rider F. W. P., Rider A, and found them to be—F. W. P., Rider A—F. W. P., Photograph A, I should have said—with the photograph on Plate 5 and its rider, to be all from the same negative. I recognize the rider to Plate 5th by certain accidental marks. In Book 1, Volume 1, Plate 11, I recognize the riders, the rider and photograph, as being from the same negative as F. W. P., Photograph A, and rider F. W. P., Rider A.

Int. 32. State whether or not you have made the subject of the

lenses used in photography a matter of any, and, if so, what study and examination, and with what result.

(Objected to as immaterial.)

Ans. I have studied the subject for about ten years past, considering the matter almost daily. I have discovered the methods to be employed in producing photographs of an absolute size. I have shown the globe lens to be more reliable than any other lens has been shown to be. My investigations are published in the various reports of the United States Coast Survey, and in the Philadelphia Photographer for September, 1866, and March, 1867.

(Respondents object to this part of witness's answer as wholly immaterial.)

Int. 33. State whether or not you have any, and, if so, what knowledge of the Voigtlander lens as used in photography, and as to its accuracy, as compared with the globe lens.

(Objected to as immaterial.)

Ans. By the Voigtlander lens is usually understood the portrait lens. This lens is universally known to be very inaccurate and worthless for the purpose of copying lines. The distortions produced by this lens are a common reproach to photography. The Voigtlander lens is not comparable to the globe lens for accuracy.

Int. 34. State whether or not the Voigtlander lens has any, and, if so, what qualities which render it more or less valuable in photographing the human countenance, or objects in motion, or changeable.

(Objected to as leading and immaterial.)

Ans. The Voigtlander lens has the advantage of throwing a large amount of light in making the photograph. This enables it
319 to work with great rapidity. Its superiority over the globe lens for photographing movable objects is in its capacity for employing so much more light than the globe lens.

Int. 35. State relatively the difference in time which it takes to make a picture by the Voigtlander or the globe.

(Objected to as immaterial.)

Ans. I should think a Voigtlander, with full aperture, would work from fifteen to twenty-five times as fast as a globe lens.

Int. 36. State what position, with reference to other lenses, as to accuracy, the globe lens holds among all lenses, among photographers.

(Objected to as leading and immaterial.)

Ans. I believe it is now nearly universally admitted to be the best lens for accurate work, excepting in England, where some people claim to have better lenses for sale, but I know of no measurements which exhibit anything like the accurate performance of the globe.

Int. 37. What lenses are used, in your division of the Coast Survey, in photographing, and how long has this been so?

(Objected to as immaterial.)

Ans. No other lens is used in the Coast Survey office than the globe lens for photographing line work. The globe has been employed some four years, or about that.

Int. 38. State whether or not any person, and who, has pointed out to you any photographic apparatus as that by which the plates attached to said book R. vs. M., F. W. P., and the corresponding riders or transparencies were made.

(Objected to as immaterial and leading.)

Ans. Mr. Black, of this city, pointed out such apparatus to me.

Int. 39. Any one else, and, if so, who present, besides yourself and Mr. Black?

(Objected to as before.)

Ans. Mr. J. C. Crossman was present.

Int. 40. What lens was used in that apparatus, and what was the character of the apparatus, as to its capacity to do accurate work?

(Objected to as before.)

Ans. The globe lens was used in it. The apparatus was good, though crude; with it, a good workman would produce good results.

320 Cross-examination:

Cross-int. 1. What divisions of labor obtain in the office of the Coast Survey, or in what departments is it arranged?

Ans. The Coast Survey office is divided into the disbursing agent's office, the computing division, the drawing division, the engraving division, the electrotype and photograph division. There is also the department of printing, lithographing, instrument-repairing, and carpentry.

Cross-int. 2. You don't belong to the engraving or the drawing division, do you?

Ans. No.

Cross-int. 3. You have nothing to do with the lithography, do you?

Ans. Not directly.

Cross-int. 4. How long have you been connected with the office?

Ans. Some seventeen or eighteen years.

Cross-int. 5. Your business before that time?

Ans. Making of optical and other philosophical apparatus, and teaching school.

Cross-int. 6. Where?

Ans. I was connected with James Green, now a hundred and some number Grand street, New York, from my sixteenth year to the time I went to the Coast Survey, nearly, in his business as an optician and philosophical apparatus maker,—some twelve years in all.

Cross-int. 7. You neither work in nor superintend the drawing department of the Coast Survey, do you?

Ans. The photographic department is intimately connected with the drawing department, but I am not classed in the office as being in the drawing department.

Cross-int. 8. (To the examiner.) Please repeat the question to the witness, and request him to answer it. (The examiner does so.)

Ans. I conceive the answer I gave is to the question and the facts.

Cross-int. 9. Is that the best and most intelligent answer you can give to the question?

Ans. I think that is the best and most intelligent answer that can be given to the question.

321 Cross-int. 10. Is the question capable of being answered negatively or affirmatively?

Ans. No.

Cross-int. 11. Do you correct, supervise or correct, the work of the drawing department?

Ans. I sometimes return work, through the assistant in charge, to the drawing department.

Cross-int. 12. (To the examiner.) Please repeat the question to the witness, and ask him to answer it. (The examiner does so.)

Ans. The connection of the photographic with the drawing department is such that I have frequently to inspect the work of the drawing department. I am not the official head of the drawing department.

Cross-int. 13. Who is the head of the drawing department?

Ans. The photographic division has so materially changed the drawing division, that I think there is no longer a draughtsman as the recognized head of that division. The drawing division, with all the other divisions, is under the charge of the assistant in charge of office.

Cross-int. 14. Who supervises the work of the drawing department? Please answer that question, if you know.

Ans. I anwswered that question when I said the assistant in charge of office supervised the work of the drawing department.

Cross-int. 15. Is there no person in the drawing department who acts as its head, and supervises the work done in that division?

Ans. I know of no person in such official capacity in that department. The division has been for years under the immediate supervision of the assistant in charge of office. I know of no change.

Cross-int. 16. And who may he be who supervises the work of the drawing department?

Ans. I have already fully answered the question.

Cross-int. 17. Please add to your full answer, already made, by giving us the name of the individual in question, in further answer to the last question.

Ans. Julius E. Hilgard is the assistant in charge of office.

Cross-int. 18. Julius E. Hilgard, then, supervises the drawing division of the Coast Survey, does he?

Ans. Yes; the drawing division with all the other divisions.

322 Cross-int. 19. The photographic division inclusive?

Ans. Yes.

Cross-int. 20. Drawings are made in the drawing division, and brought to you to be copied and multiplied by photography, are they not?

Ans. Some drawings are so made and brought to me. Generally the drawings brought to me are of the class called tracings.

Cross-int. 21. Whether drawings or tracings, they are brought to you for the purpose stated in the previous question, are they not?

Ans. For that purpose.

Cross-int. 22. And is the photographic and electrotyping division, like the division of drawing, without a head?

Ans. All the photographing and electrotyping is done by me or by my supervision. The drawing division, I have said repeatedly, is under the supervision of J. E. Hilgard. Mr. Hilgard is a mathematician, not a draughtsman.

Cross-int. 23. Then the drawing division is supervised by one who is not a draughtsman, is it?

Ans. Yes; an engineer is a more suitable supervisor of the drawing division than a draughtsman would be. It has always been supervised by an engineer.

Recess—1 p. m. to 2 p. m.

Cross-int. 24. In the drawings which are copied in the drawing division, is any particular attention paid to copying the names with precision?

Ans. My attention to the tracing or drawing, preparatory to photographing it, is simply to the lines and their character, and not to the purport of the work.

Cross-int. 25. Now, if you'll be kind enough to pay some attention to the question, and come somewhere near an answer to it, I'll be obliged to you.

Ans. I understood the question to refer to copies made in the photographic department. I know of no drawings being copied in the drawing division.

Cross-int. 26. In the tracings which are made from those
323 drawings, is any particular attention paid to copying with precision the names which are in those originals?

Ans. The attention is given to the copying of the individual lines.

Cross-int. 27. Adverting to your answer to the third question, you say, "I introduced into the United States Coast Survey the present practice of reducing plane-table sheets to the publication scale by the aid of tracings. I originated this practice." What invention in that practice was your invention?

Ans. The whole, as a combination.

Cross-int. 28. State any one feature of the practice that originated with you.

Ans. The feature of the whole as a combination.

Cross-int. 29. Do you not know that the practice was in use in England long before it was introduced into our Coast Survey office?

Ans. I do not know it.

Cross-int. 30. Will you say it was not?

Ans. I will say I have seen no report of it in the report of Sir Henry James, of the British ordnance survey, on the use of photography at the office in Southampton.

Cross-int. 31. Have you not been given to understand that the

system was in use in England before it was introduced into our Coast Survey office?

Ans. I have not.

Cross-int. 32. What was the novelty of that system,—the new idea that was there reduced to service?

Ans. The novelty consisted in the photographing of a tracing constructed according to certain rules for generalizing instead of making the photograph directly from the plane-table sheet.

Cross-int. 33. Was the tracing a reduction of the plane-table sheet, and, if so, by any fixed rules?

Ans. I answer that the question is absurd. I mean by "absurd," in relation to the elements of the question.

Cross-int. 34. Explain in your own way in what the invention or new method consisted.

Ans. Please read my former answer to it. (The examiner reads the answer to cross-interrogatory thirty-two.) That is my answer to the question.

324 Cross-int. 35. What do you mean by "generalizing?"

Ans. Putting of certain additional matters on a tracing to stand for matters omitted from the drawing.

Cross-int. 36. Such as—illustrate.

Ans. The sign for a village, instead of individual houses, when the tracing is to be much reduced.

Cross-int. 37. You use the very word now, which you said it was absurd in me to use; when I spoke of reducing the tracing, you said it was absurd.

Ans. I do not so understand it. My reduction applies to the future of the tracing. I frame all my answers simply with reference to the form of the question, and the facts.

Cross-int. 38. To return to the question, what was the novel feature which you introduced into the practice?

Ans. The novelty was in the combination as a whole.

Cross-int. 39. Combination of what? Of what parts that made up the whole?

Ans. In the making of a tracing, as I have said before, and in photographing it to an absolute size.

Cross-int. 40. How did the tracing, if at all, depart from the original, or differ from it, in your new system, if it was new?

Ans. In omitting certain parts from the original, and substituting things on the tracing not found in the original. Sometimes these tracings are only copies of parts of the original sheet; sometimes they are exact copies of the whole; sometimes they are part copies, with additional matter drawn on the tracing.

Cross-int. 41. How copies of parts? What is omitted, and what retained, ordinarily?

Ans. Well, a house or a village, for instance, is sometimes omitted. Individual trees and other objects, which would be too small, in the reduction to appear to the eye.

Cross-int. 41. What reduction do you now speak of, if one may be allowed to use that word?

Ans. The smaller photograph is technically called a reduction.

Cross-int. 42. Well, did your invention consist in the substitution of a sign for a village, or the omission of a tree or a house, or what was it?

325 Ans. It was in the photographing of a generalized tracing, in which such substitution formed part of the generalization, to an absolute size. The generalization extends to the correction of other things on the drawing, especially the lines of latitude and longitude.

Cross-int. 43. Is that all?

Ans. No; but I cannot relate all now; I think I have related enough to state wherein the invention consisted.

Cross-int. 44. Was the reduction by photograph a novel idea?

Ans. The practice was novel in so far as it consisted in bringing it to an absolute size. I am not aware that this has been done anywhere yet except in the office of the United States Coast Survey.

Cross-int. 45. Have the reduced photographs been published in the volumes of the Coast Survey, any of them?

Ans. The maps obtained from the reduced photographs have been published in the volumes of the Coast Survey. We do not distribute photographs to the public. The photographs are kept among our archives.

Cross-int. 46. Are they lithographed from the photographs, the maps that are made, in the office?

Ans. Some have been lithographed in the office from the photographs, but generally they are engraved. The maps in the Coast Survey Report are lithographs, made by the Congressional Printer, from the engraved maps accompanying the report of the Superintendent of the Coast Survey to the Secretary of the Treasury.

Cross-int. 47. Have you any experience in the tracing of signatures, yourself?

Ans. Not particularly of signatures. I regard a signature as consisting of lines and forms. I have much experience in the tracing of lines and forms.

Cross-int. 48. Now, to come back to the question, have you any experience in the tracing of signatures?

Ans. I do not consider that the question admits of an answer yes or no. I conceive that I have already fully answered it. I do not conceive that a signature is anything but lines and forms.

Cross-int. 49. The character of the writer doesn't find its way at all into it, does it?

326 Ans. If it's anything like a tracing, it does.

Cross-int. 50. That is, in a tracing, if I understand you, the characteristics of the hand tracing would be found?

Ans. The capabilities of the hand tracing will be found, and the characteristics of the handwriting.

Cross-int. 51. In a simple original signature of a name, then, your eyes sees but lines and forms?

Ans. No. Habits of the writer in holding the pen. These are expressed by the combinations of lines and forms.

Cross-int. 52. Then there is something more in it than lines and forms?

Ans. Nothing but what is formed of lines and forms is visible to the human eye, excepting color.

Cross-int. 53. And that, you conceive, is a fair answer to the question put to you?

Ans. That is a fair and intelligent answer.

Cross-int. 54. No mental or moral characteristics are read in the signature, or discerned in it, are they?

Ans. I have just said they were discernible from the combination of lines and forms.

Cross-int. 55. Would you expect a tracing to retain those characteristics?

Ans. Only in part.

Cross-int. 56. And would it not also retain more or less of the characteristics of the hand tracing?

Ans. I conceive that no two hands would make a precisely similar tracing—not of the characteristic handwriting of the person tracing, if that is meant.

Cross-int. 57. Why not?

Ans. I can only answer that I have no reason to infer that it would. I have never witnessed any such thing.

Cross-int. 58. To the extent that it was not artificial, would it not be natural? Where the copyist did not adhere strictly to the original, wouldn't he be likely to fall into his own hand?

Ans. Just as likely into any other hand, unless he left tracing and began writing.

327 Cross-int. 59. Just as likely to subside into the handwriting of some other person as to fall into his own; is that what you mean?

Ans. Not through any length of space.

(When the question was dictated to the examiner, and before he had recorded it, or begun to put it, the witness, hearing the question as the counsel dictated it, answered, Yes. When the examiner, after recording the question, put it, he answered as above.)

Cross-int. 60. Why should a person, undertaking to trace the signature of another person, fall into the handwriting of a third person?

Ans. I cannot conceive at all. The moment he leaves off tracing, he departs from the signature; and that's the end of my answer.

Cross-int. 61. When he departs from the tracing, into whose handwriting is he likely to fall, his own or some third person's?

Ans. Do I understand you to say, "When he departs from the tracing?"

Cross-int. 62. That's exactly the way it is written.

Ans. If I understand by "when he departs from the tracing," "when he goes away from the tracing," then whenever he begins to write again he will write his own hand most naturally.

Cross-int. 63. Is that the way you understand the question?

Ans. That's what the words are.

Cross-int. 64. Ah, that's it; that's what you mean by understanding the question in that way?

Ans. If that's an interrogatory, I don't see wherein the interrogatory is; I frame my answers by the form of the question and the facts; by no other considerations.

Cross-int. 65. And you supposed that when a question was made as to tracing, and a departure from the original was spoken of, it meant the bodily going away from the work?

Ans. I did not so suppose; a departure from the tracing was spoken of, and not from the original.

Cross-int. 66. Did you suppose a departure from the tracing meant a bodily going away from the work?

Ans. No.

Cross-int. 67. Where, in a tracing, the hand departs from the original, by mistake, inadvertence, want of care, weariness, in those departures wouldn't you be likely to find more or less of the characteristics of the handwriting of the tracer?

328 Ans. I do not conceive so.

Cross-int. 68. Don't you know that both in feigned handwriting and in tracings of signatures, the fraud has often been detected by the failure of the party attempting the similation or tracing, to conceal the characteristics of his own hand?

Ans. I should call both such cases feigned handwritings. I do not conceive that a skilled tracer would depart from the original, or a mere beginner could very closely approach to the original by partly writing and partly tracing.

Cross-int. 69. Suppose he were neither a skilled tracer nor a mere beginner, but half-way between the two, what then?

Ans. In so far as he copied the original, his tracing would be like it, and when he departed from the tracing, he would exhibit his own hand.

Cross-int. 70. And if in tracing he failed to see perfectly, say the termination of a letter, but undertook to complete it, that termination would be likely to be his own handwriting, would it not?

Ans. It might be so.

Cross-int. 71. What are the probabilities of such a case?

Ans. I think they are strong.

Cross-int. 72. Now, Mr. Mathiot, if you were called into court to testify as to the genuineness of a signature, against a man indicted for forgery, and you had some of his admitted signatures laid before you, wouldn't you look into those signatures carefully, and then look into the signature alleged to be forged, to see if the characteristics of these admitted signatures were to be found in that alleged to be forged?

Ans. Yes.

Cross-int. 73. Were you ever examined in court as an expert on a question of handwriting?

Ans. No.

Cross-int. 74. Or on a question of the tracing of handwriting?

Ans. No.

Cross-int. 75. Are you an expert in the matter of handwriting?

Ans. I have considered the forms of handwriting a great deal. I have made no especial investigations for the detection of counterfeitings or forgeries. [I think I know similarities of hands, and know a traced line when I see it, but am not as positive about
329 being able to detect traced lines as I was before the signatures here of Stephen Fairbanks. I should hesitate very much now before I would say positively that a line was traced.]

(Bracketed part of answer objected to as irresponsive.)

Cross-int. 76. Moving along with these preliminary matters, what is the difference in the structure of the Voigtlander lens and the globe lens?

Ans. The Voigtlander lens consists of two lenses, with a large aperture, arranged to each other for the purpose of throwing the greatest amount of light on any one point of the picture. The globe lens is arranged for accurate representation of forms. This is done in the globe by using the property in optics of a meniscus lens, in that it refracts all converging rays to a single point. The globe lens consists of two meniscus lenses placed back to back. The second lens thus takes up the rays of the first lens from the point of convergence without distortion. So the angles of light are retained the same behind the lens as they are before the lens. This necessarily produces perfect representation of form.

Cross-int. 77. That describes the globe lens, but not the Voigtlander lens.

Ans. The Voigtlander lens consists of two double-convex lenses. It is the nature of a double-convex lens to distribute the light behind the lens from what it receives it in front. Hence accurate representation is impossible.

Cross-int. 78. You testiffed to-day in regard to Book 1, Volume 11, and Book 1, Volume 1, R. C. P., and to your examination of the photographs therein contained. Were they all made by the Voigtlander lens?

Ans. All the photographs I measured were distorted, as though made by the Voigtlander lens. I was not present when they were taken dan do not know by whom they were made.

4.30 p. m.—Adjourned to Tuesday, April 30, 1867, 9.30 a m.

TUESDAY, *April* 30, 1867—9.30 a. m.

Cross-int. 79. What's your best judgment as to those photographs having been made, all of them, by the Voigtlander lens?

Ans. I did not measure all of them.

330 Cross-int. 80. State as to those you did measure?

Ans. Those I measured I found distorted; the distortion, I inferred, was mainly due to a lens employed. The photographs are changed, or affected in size, also, by the mode of mounting and printing. Other lenses besides the Voigtlander distort.

Cross-int. 81. Now, returning to the question that I put to you, and as to the photographs you did examine, what is your judgment,

if you have any, as to whether they were made by the Voigtlander lens or not?

Ans. I see nothing to lead me to infer which particular lens produced the distortion. I only know they are distorted.

Cross-int. 82. Looking at the papers contained in Envelope 3, Book 1, Volume 2, tell us by what lens they are made, if you know.

Ans. The answer is already fully contained in the answers given this morning, concerning the particular lens employed.

Cross-int. 83. As to the production of those papers, that's the best answer you can give?

Ans. Yes; that answer, and the answers I made in my deposition in chief, as to those papers.

Cross-int. 84. And when you testified as to those measurements, did your measurements concern the papers themselves, or the writing contained on them? (On seeing the witness refer to his memoranda, counsel asked:) Are you not able to answer that question without referring to your memoranda?

Ans. I do not conceive any mortal could do it. I answer further that my measurement refers to the photograph of the paper and the writing.

Cross-int. 85. And not to the relative sizes of the paper?

Ans. I have just said that it did refer to it.

Cross-int. 86. Then, you were misunderstood. Now I put the question again.

Ans. My measurements were of the paper of the originals, and the photographic copies.

Cross-int. 87. They were measurements from the outside edges of the paper, and not from the point in the paper where the writing commences, were they?

Ans. Yes.

331 Cross-int. 88. Are you able to say that those papers were not made by the globe lens?

Ans. I tested these particular papers for their purport on the envelope, and found they were not exact dimensions as they purported to be. I have already said that I did not know what lens was employed in making the papers of this book. A worthless lens might be apparently a globe lens. By globe lens, I mean a good and efficient lens of that construction.

Cross-int. 89. Do you understand that exact dimensions, as written on envelope No. 3, referred to the writing or the paper?

Ans. I understand it refers to objects known here as Nos. 1, 10, and 15, F. W. P.

Cross-int. 90. And you went over, examined these as the other parts of the book with a view to their criticism, and to finding inaccuracies?

Ans. Answer already fully contained in previous answers.

Cross-int. 91. Please to answer the question put.

Ans. I have already answered it.

Cross-int. 92. Please repeat the question. (To the examiner, who does so.)

Ans. My answer concerning the objects in envelope No. 3 is fully contained and particularly contained in my answer concerning those objects in my deposition in chief, and in the answers already given previously, this morning, concerning the papers contained in envelope No. 3.

Cross-int. 93. Will you oblige us by answering the question put to you?

Ans. I have already answered it this morning.

Cross-int. 94. Do you intend to give no other reply to the question?

Ans. I contemplate nothing more than what has already been given.

Cross-int. 95. Are you acquainted with the manufacture of paper?

Ans. Not practically.

Cross-int. 96. Theoretically?

Ans. I have read accounts of the manufacture of paper.

Cross-int. 97. Is that the only answer to that question?

Ans. Yes.

Cross-int. 98. Do you know anything of the contraction and
332 expansion of paper in different states of the atmosphere, as affected by the different material of which it is made?

Ans. No, I do not; but I know what I have gained in years of experience of the expansion and contraction of various papers by changes of the atmosphere in its hygrometric conditions.

Cross-int. 99. Is that affected by the fact of its being made of linen or cotton?

Ans. More by its mechanical structure and other circumstances.

Cross-int. 100. Please answer the question.

Ans. In my measurements, I have found cotton papers expand more than linen papers.

Cross-int. 101. Is that the general fact, do you understand?

Ans. I speak only of my own experience.

Cross-int. 102. You know nothing beyond that?

Ans. I have seen no measurements of comparisons.

Cross-int. 103. Taking paper manufactured from the same material, and in the same way, what do you know of its expansion and contraction in different states of the atmosphere?

Ans. What material and ways are referred to? Does the question relate to two pieces of paper, manufactured in the same way from the same material, or of any one paper? If to the latter, I reply that it increases in length with the fall of the dew-point.

Cross-int. 104. Have you ever made any experiments to see the extent of the expansion in a given time, in different states of the atmosphere?

Ans. I have made such experiments—not, however, with reference to the extent of the expansion in a given time. I have made thousands of measurements of expansion and contraction produced by hygrometric changes. [I say the discrepancies in the papers in envelope No. 3 are not those due to hygrometric changes.]

(Bracketed portion objected to, as not at all responsive, by respondents.)

Cross-int. 105. Turning aside from the inquiry, to put a single

question as to the matter last stated by you, though not responsive to the question put, what are those discrepancies owing to?

Ans. My previous answers already contain this answer, in full; and in brief, this: that it is impossible I should know, not having witnessed the preparation of these photographs.

333 Cross-int. 106. If you had already fully answered on that subject, what occasion to interpose the last remark to the last question, when the question made no reference to those papers in envelope No. 3.

Ans. That is only a question of the logical connection in my answers.

Cross-int. 107. Is that the only answer?

Ans. Yes; these papers are lying before me, and I understood the whole inquiry to have reference to those papers.

Cross-int. 108. Returning to the line of our inquiry, are any scales or measures used to correct the inaccuracies caused by the expansion of the paper, or to avoid them?

Ans. The question is so very indefinite that I cannot give a proper answer to it, except, I may say, that I know of no persons employing scales or measures to correct expansions or contractions produced by hygrometric conditions.

Cross-int. 109. Or to avoid them?

Ans. How a scale or measure could be used to avoid these things I cannot conceive.

Cross-int. 110. Not to avoid the expansion or contraction, but the errors and inaccuracies that might be occasioned by them if not allowed for?

Ans. No.

Cross-int. 111. Are paper scales ever used, or measures?

Ans. Not by me.

Cross-int. 112. In the department of the Coast Survey?

Ans. Never.

Cross-int. 113. Everywhere where accuracy is sought?

Ans. What is the question?

Cross-int. 114. Please read him the previous questions. (To the examiner, who reads cross-interrogatory one hundred and eleven, cross-interrogatory one hundred and twelve, cross-interrogatory one hundred and thirteen.)

Ans. My question had reference to the interrogatory in the sentence "Everywhere where accuracy is sought?" I cannot see what it refers to.

Cross-int. 115. Where accuracy is sought—great accuracy—if the paper or pasteboard upon which the lines are drawn expands with the atmosphere and the increased moisture of the atmosphere,

334 and the metal rule you use does not so expand, or in the same proportion, how can you be sure of the accuracy of the measurements made with the metal scale?

Ans. By simply measuring it.

Cross-int. 116. How, simply?

Ans. Measuring one and then measuring the other.

Cross-int. 117. And if you measured the first line by the metal scale, and the paper in the meantime is expanded, and you measure the other lines by the same metal scale, with the same distances on the scale and on the paper, what becomes of the accuracy of your measurements, when in a dryer state of the atmosphere the paper or pasteboard has contracted?

Ans. I do not know the line here referred to as "the first line." I have said that the lines would change lengths in different states of the atmosphere. [I think I can come to the point of the question by saying that these hygrometric changes are comparatively nothing compared to the inaccuracies in these books and volumes.]

(Bracketed portion of answer objected to, as irresponsive and impertinent, by respondents.)

Cross-int. 118. Then you never saw any paper scales used?

Ans. Not for line work.

Cross-int. 119. Isn't that the special work for which they are used?

Ans. I have never seen them so used.

Cross-int. 120. As a matter of science or art, have you any knowledge on that subject one way or the other?

Ans. I have read of paper scales being employed with loose drawings.

Cross-int. 121. That answer exhausts your information on that subject, does it?

Ans. No, sir; but I think it's an answer to the subject.

Cross-int. 122. With what material are these photographs in Book 1, Volumes 1 and 2, fastened to the pasteboard?

Ans. I have no personal knowledge of it, and never heard anything reputed of it.

Cross-int. 123. You can't determine from inspection?

Ans. Not now; possibly might not ever be able to determine.

Cross-int. 124. Were these wet before they were put upon the pasteboard in any way?

335 Ans. Impossible that I should know.

Cross-int. 125. Or judge or form an intelligent opinion?

Ans. I cannot say how they were put down there—I know nothing of their being put down there. I am accustomed to forming opinions only by long investigation.

Cross-int. 126. Was your examination of these papers a long or a short one?

Ans. A long and tedious one.

Cross-int. 127. In a long and tedious examination of these papers, for the purpose of forming a judgment how they were made, with what accuracy they were made, how far the riders corresponded with the opaque photographs, what evidence there was of carelessness or precision in the making of them, you didn't think it worth while to inquire or ascertain in any way how the photographs were attached, pasted to the card or pasteboard, whether moistened before they were attached to the pasteboard, or what material was used in giving transparency to the riders, did you?

Ans. Not as I remember—as I now remember. My examination

was of the photographs as they then were. Inquiry as to the previous circumstances of these photographs would have had no connection with the measurements.

Cross-int. 128. Is that the whole answer to that question?

Ans. Yes.

Cross-int. 129. What material is used in giving transparency to these riders?

Ans. I do not know.

Cross int. 130. I understand you, that for the invention which you made for the Coast Survey, you made various tracings to perfect the work. Would you object to tracing one of these signatures or photographs, for the purpose of showing to the court the degree of skill with which you can make a tracing?

(Plaintiff's counsel suggests to witness that he is at liberty to consent or decline as he pleases, that having been ruled by the circuit court of the United States in the examination of Mr. Southworth in this case. Further, that if it would take time, midway in the deposition, plaintiff's counsel objects. Counsel for respondents suggest that as the question was addressed to the election of the witness only,

336 and he was not either asked or required to do anything, the interposition was unnecessary, and, to say the least, premature. And, as for the matter of delay, there is no desire that the examination should be interrupted.)

Ans. Here, now?

Cross-int. 131. In the intermission, in the presence of counsel for both sides.

Ans. I am not now in bodily and mental condition to permit me to illustrate my abilities in tracing by actually making a tracing. I can do it by reference to other tracings, existing before the court, or supposed existing tracings; but I have already said that with all my acquaintance with tracings, and attempts to make tracings, I am not a passable tracer.

Cross-int. 132. The character of the work, then, would be affected, whether in making the original or the tracing, by the varying bodily and mental condition of the worker?

Ans. Yes.

Cross-int. 133. And if the variance of bodily and mental condition was caused by disease, and especially a disease which affected immediately the nervous system, you would look for great variations in the work, would you not?

Ans. I would; but not for the amount of variance which affectations of the mind would produce. Now, I would illustrate by saying that in my own case I observe that I wrote my hand while in the worst stages of small-pox as well as before I had the disease. These things, I say, are only opinions so far; crude opinions, not yet fit to be dignified with the name science, or relied on, though ultimately we shall have a science of the indications of bodily conditions and mental conditions from the handwritings.

Cross-int. 134. Without looking to the improved condition of future times, the more simple question which I should like to have your

opinion upon is, whether one's writing or tracing would be affected by the bodily and mental condition at the time?

Ans. Well, have I not already said that in my opinion it would?

Cross-int. 135. When were you first conferred with in relation to this cause?

Ans. Well, I judge, without remembering dates, some three or four weeks ago; three weeks, perhaps.

337 Cross-int. 136. Will the manuscript which you hold in your hand assist you in fixing the date?

Ans. No.

Cross-int. 137. Where were you when first seen on this subject?

Ans. Here, in this room, (office of David Thaxter, esquire, 16 Court street, Boston,) seven days ago.

Cross-int. 138. Was it then seven days ago that you were first conferred with on the subject?

Ans. I don't know what "conferred" means in that connection. I say that the first communication made to me was some three or four weeks ago, and the first time I saw these gentlemen here and learned anything concerning the matter of the case was one week ago—this day one week.

Cross-int. 139. At what time on Tuesday last did you first see these gentlemen?

Ans. I saw Mr. Bartlett at his house the evening before, at the door, only introduced myself, and inquired the name of a hotel that would be close to his office. I suppose it was about nine o'clock on Tuesday morning that he made the first statement concerning the case to me—Mr. Francis Bartlett, I mean.

Cross-int. 140. Did he give you a history of the case, brief or otherwise.

Ans. I cannot answer that, because I don't know what the history of the case is. He referred me to the original will papers—signatures and photographs.

Cross-int. 141. How did you get the request to come here, orally or by letter?

Ans. By letter.

Cross-int. 142. Was the first intimation or request made by letter?

Ans. The first request was made by letter. Previously to that, probably two months before, inquiry had been made of me by Mr. Whiting, to know if I would come to Boston to be a witness in a case involving photographs. But the matter had all gone out of my mind at the time the Messrs. Bartlett wrote to me. I should have stated previously, that I saw Mr. Whiting again two days before I departed from Washington.

338 Cross-int. 143. What Mr. Whiting was that?

Ans. Mr. Henry Whiting, assistant surveyor United States Coast Survey. He resides on Martha's Vineyard, I believe.

Cross-int. 144. When did he come to Washington to see you?

Ans. I think he came to Washington in pursuance of his duties. I have stated the time when he first stated that I was wanted as a witness in a case involving photographs. My communication with him

was very brief, not amounting to three minutes, both interviews put together ; therefore, it left a very imperfect trace on my mind. We talked mostly of other matters during that time. I am well acquainted with Mr. Whiting.

Cross-int. 145. Give us the date of the interview referred to.

Ans. I cannot give you the date. It may have been a month ago, and it may have been two months ago, for anything I can recollect.

Cross-int. 146. Did Mr. Whiting tell you the amount involved in the case, or who the parties were ?

Ans. No ; he did not tell me the amount involved, excepting in an indefinite way, saying it was a devil of an amount. I do not yet know who the parties are in this case.

Cross-int. 147. And did he say in substance or effect that it was a devilish good chance for pay ? The question refers to ideas and not words.

Ans. He did not. I stated to Mr. Whiting that I had once before appeared as a witness in a long case before a court, and did not even get my railroad tickets paid for. He put a pointed question to me : "Would I go if my travelling expenses were paid ?" I told him I would. At the second interview with Mr. Whiting, I told him I thought I would not go. I was apprehensive of its involving me in loss. He told me that he knew these men to be gentlemen, and I might rely upon their paying all absolute expenses. That's all of the words and the ideas of pay.

Cross-int. 148. Then the word "absolute" you carry in your memory distinctly about it ? "Absolute expenses ?"

Ans. I don't mean to say that Mr. Whiting used the word "absolute."

Cross-int. 149. That's all you expect to got for coming on, is it ; your absolute expenses ?

339 Ans. I came here because I thought it was my duty ; and I came with a fear that I would not get my travelling expenses, even, from city to city, paid.

Cross-int. 150. Please revert to the question, and answer it, if you will.

Ans. Yes.

Cross-int. 151. Did Mr. Whiting apply for your leave of absence from the Coast Survey ?

Ans. Not to my knowledge. I applied, or rather notified the assistant in charge of my intention to leave.

Cross-int. 152. The only expectation of compensation which you have is the payment of your travelling expenses and expenses while here, is that so ?

Ans. I have already fully stated everything relating to the expenses.

Cross-int. 153. Will you be good enough to answer the question ?

Ans. I think I did. I will state further that there has been no bargain nor intimation in any way that I should receive a bonus or anything beyond the expense that I sustain in coming here.

Cross-int. 154. Turning your attention to the question, will you be kind enough either to answer it or to decline answering it?

(The examiner reads cross-interrogatory one hundred and fifty-two.)

Ans. No. There are other expenses besides my travelling expenses and expenses while here. Now I say again that there has been no intimation or bargain, in words or ideas, of paying me anything but expenses.

Cross-int. 155. That is not the question. The question is whether you have any expectation of being compensated for your time and services here.

Ans. I have no expectation of being compensated for my time and services here.

Recess—1 p. m. to 2 p. m.

Cross-int. 156. You speak, in your examination in chief, of tracing No. 1—of the difficulty of tracing No. 1 through 10 and 15, and state that no one could do it but an experienced tracer. Did you
340 examine carefully the texture of the paper, and did you observe that the paper on which 1, 10, and 15 are written is very much soiled?

Ans. I did. I answer so to both branches of the inquiry.

Cross-int. 157. You have not tried the experiment of tracing a signature through the paper on which Nos. 1, 10, and 15 are written, have you?

Ans. I did not try to make a tracing on these two papers. I superposed the papers 10 and 15 on signature on No. 1, and concluded that, even supposing the paper to have been clean, and concluded that the idea of having written 10 and 15 by laying the paper on 1, the signature on 1, was a fallacy.

Cross-int. 158. You mean to say that the paper on which 1, 10, and 15 are written, is so opaque that the signature could not be traced through?

Ans. Yes; not traced through with all the departures from the form of No. 1, and still retain the peculiarities of the handwriting. My full conviction was and is, that the writings Nos. 10 and 15 were never obtained, by either an adept or a novice, from No. 1, by any process of tracing.

Cross-int. 159. Will you read the question to the witness?

(The examiner does so.)

Ans. Yes; it could not be traced through, as so traced on Nos. 10 and 15.

Cross-int. 160. It is so opaque, that the signature below could not be seen through with sufficient distinctness to be traced; do you mean that?

Ans. Yes; if by "traced" is meant resemblance of the forms in No. 1.

Cross-int. 161. That it is so opaque that resemblance of the forms of No. 1 could not be obtained through the paper by tracing?

Ans. Yes; so opaque that a good resemblance could not be pro-

duced, nor even an approximate resemblance, if made by a person not practised.

Cross-int. 162. What is that paper made of? What is the material?

Ans. I cannot state now, whether it is a linen or a cotton paper, from my recollection of it.

Cross-int. 163. Examine it, and see.

Ans. I cannot examine it now.

341 Cross-int. 164. Why not?

Ans. Time and circumstances do not admit of it.

Cross-int. 165. Take such time as you desire for the purpose.

Ans. Would it be allowable to examine it to-morrow? I say, further, I am fatigued in this cross-examination, and my eyes are fatigued from the examination of those papers. Except in a good light and a quiet place, I decline to make any further examination of them.

Cross-int. 166. How does the opaqueness of the paper on which those documents are written compare with the opaqueness of letter-paper in general use? Is it more opaque or less so? making proper allowance for the dirt.

Ans. Making allowance for the dirt, I think it is more than twice as opaque, and three or four times as difficult to trace on, considering the water-markings. On and through, I should have said.

Cross-int. 167. Are 15 and 10 too good to have been traced, or too bad, as copies or resemblances of the original?

Ans. Too good, as handwritings; too bad, as tracings.

Cross-int. 168. The general structure, the spaces between the words and syllables of words, the curvatures made by words or parts of words, the departures from a base line—is the resemblance in these regards too great for traced copies?

Ans. The resemblance is in the general form of the letters. The discrepancies is in the general size of the letters, spacings between letters and parts of letters, length of words, and the sentences 1 and 15, and departure from base line, for such resemblances in letters ever to have been obtained by tracing under such circumstances.

Cross-int. 169. Then the difference in general structural effect, the spacings between the words and parts of words, the curvatures made by words or parts of words, the distances and departures of words and various parts of words from a base line—it is in these regards, is it, that 10 so differs from 1?

Ans. Yes. The question is so long I cannot retain the whole of it in my mind and give an immediate answer to it.

(This after the examiner had repeated the question at the request of witness.)

Cross-int. 170. Let me ask you whether this sentence sounds familiar to you: "When a drawing is received for reduction,

342 the first thing to be considered is the size to which it is to be reduced. The drawings are always liable to a change in size from changes in the weather."

Ans. I have heard the words "drawing," "reductions," and "changes in the weather," so many times here to-day, that the words sound very familiar to me.

Cross-int. 171. Any further answer to that question?

Ans. The whole sentence does not occur to me.

Cross-int. 172. Is it true that the drawings are always liable to changes in size from changes in the weather?

Ans. Yes; loose drawings are.

Cross-int. 173. Are the drawings in the Coast Survey what you call loose drawings, or what species or parts of them do you call loose drawings? Those on paper as distinguished from those on cardboard?

Ans. The tracings I photograph are loose drawings. We have no drawings in the Coast Survey on card-board—pasted or fixed on card-board. I say now, further, that it now occurs to me that the sentence quoted to me is probably an extract from my letter to Mr. Lee, concerning Coast Survey reductions.

Cross-int. 174. Looking at the bills of sale and the photographs of the signatures to them, as found in F. W. P., Plate 24, do you mean to be understood as saying that No. 4 covers 42 as well as 10 covers 1?

Ans. I did not so say, to my knowledge. If I was understood to say so, it was wrong. I said that 4 covered 42 better than 15 covered 1, and 4 resembled 42 in the way a bad tracing would resemble more than 10 resembles 1. If I said "covers 1," I did not intentionally so say.

Cross-int. 175. Please look at 4 and 42, on F. W. P., Plate 24, which I understand you to say you found by your measurements were accurately done, and say how the S in 4 covers the S in 42.

Ans. As well as the A in Ann in 15 covers 1.

Cross-int. 176. Will you be kind enough to measure the distance in 4 between the down-stroke of the S and the commencement of the y, and make the same measurement in 42, and tell me what is the difference in the spaces between the two?

Ans. About a half or a third of the thickness of the down-stroke.

Cross-int. 177. I am now referring to F. W. P., Plate 24,
343 and the photographs thereon, numbered 4 and 42, and to the spaces as there shown.

Ans. Yes; I understand it so.

Cross-int. 178. And that is your answer?

Ans. Yes.

Cross-int. 179. Look at the space between, and measure, if you please, as accurately as you may, the space between the down-stroke of y in Sylvia in No. 4, and the commencement of the l, by the hair-stroke on the left of the l; then make the same measurement in 42, and give us the difference of the intervening spaces.

Ans. I cannot make any measurement by dividers. I am too much fatigued. I cannot make any measurement by the riders, because the light is too far gone. I truly stated my opinion of these coverings after hours and hours of careful inspection.

Cross-int. 180. Will you make these measurements at some time when the light is clearer than here and now, 3.30 p. m., on rather a cloudy day, and give the result, say to-morrow morning?

Ans. I think I have made measurements enough. I am worn out with the fatigue of this matter. I am anxious to return to my home

and business. I say it is cruelty, even torture, to propound such long questions as have been propounded to me to-day, orally, and then expect a categorical answer under oath.

(At this point, the witness stating that he could make no measurements, and that he was indisposed, but that he did not ask for an adjournment, and the three counsel for respondents severally stating that there was no other line of inquiry into which they could then conveniently go, and that they must proceed with the examination as to the measurements and with no other part of the examination, the examiner adjourned the further examination of this witness to Wednesday, May 1, 1867, 9.30 a. m. This at about 3.50 p. m.)

WEDNESDAY, *May* 1, 1867—9.30 a. m.

Cross-int. 181. Whether papers purporting to be photographs of signatures of Wilde, Palfrey, and Walker, in Book R. vs. M., F. W. P., are photographed on the same scale with each other?

344 Ans. All the photographs and riders that I measured corresponded, each negative in itself being a true photograph.

Cross-int. 182. Will you be kind enough to answer the question?

Ans. Perhaps it will be better understood if I say the photographs from each negative were true in themselves; and I say, further, any comparison of different photographs from different negatives would have been foreign from any consideration for testing two photographs from the same negative, for truthfulness in themselves and each other.

Cross-int. 183. Please attend to the question which has been before read to you, and see whether you can give an affirmative or negative answer to it.

Ans. I made no consideration of it in my measurements, as to whether the photographs of any one signature had been photographed on the same scale as the photographs of any other signature.

Cross int. 184. Will you now make the measurements necessary to enable you to answer question numbered cross-interrogatory one hundred and seventy-nine?

Ans. I am here before the court to testify to what I know. Making investigations by measurements, or otherwise, I conceive to be working. The circumstances of being before the court are not favorable to my working; I therefore decline to work, either before the court or otherwhere, excepting at my appropriate place in Washington.

Cross-int. 185. Now what is your answer to the question? Will you or will you not?

(Objected to, the witness having already distinctly answered the question.)

Ans. I have already fully and definitely stated the answer. I refer to the answer to the preceding question.

Cross-int. 186. Yor have made measurements, have you not, for the plaintiff, since your examination commenced, and in the presence of the magistrate?

Ans. Not to my recollection.

Cross-int. 187. Do you mean to be understood as saying you have not?

Ans. I mean to be understood as saying that my recollection does not furnish me as having made any such measurements.

Cross-int. 188. Will you advert to the purported signatures of J. Q. Adams, Nos. 12 and 101, and measure the spacings in the
345 manner requested as to 4 and 42?

(On hearing this question read, the witness asks the examiner to read him his previous answer to a question asking him to make measurements, in which he declined to make measurements, and to tell him the number of that question. The examiner does so. Counsel for respondents requests that this be noted.)

Ans. I have already answered that question in my previous answer declining to make more measurements.

Cross-int. 189. Please bear in mind in your final answer to this question, if you make any other answer, that the relation which J. Q. Adams, 12, bears to J. Q. Adams, 101, as well as that which Photograph 4 on Plate 24 bears to 42, were distinct subject-matters in your testimony in your examination in chief, and that the object in asking you to make these measurements is not to impose labor upon you, but to test the accuracy of the statements made by you upon your examination.

Ans. I must abide by my measurements as given from my memory and my memoranda. It does not become me, as a witness, to make any assumption of the objects of the questions asked me.

Cross-int. 190. Do you mean to be understood that you do not retain sufficient self-possession in the presence of the magistrate, to enable you to do the work to your satisfaction?

Ans. I mean that I decline to do further work, except, as before specified, in my appropriate place at Washington.

Cross-int. 191. What is your answer to the last question?

Ans. The answer which I gave to it.

Cross-int. 192. How large a portion of the work of examination of which you have testified, was done in your appropriate place at Washington?

Ans. I have already fully and distinctly stated where all the work was done. I stated that my examinations were done at the clerk's office of the United States circuit court, and at 16 Court steeet.

Cross-int. 193. Will you allow us to see the memoranda or minutes from which you have testified, for the purpose of examining them?

(Plaintiff's counsel notifies defendants that if witness puts the minutes referred to into their hands in answer to this question, and they examine the same, he shall claim that they become thereby evidence in the cause.)

346 Ans. Not except under the protection of the court, as evidence produced before the court.

Cross-int. 194. You understood them to be evidence, did you?

Ans. No.

Cross-int. 195. What is your o' jection to the examination of t ese minutes?

Ans. I have no objection to their being examined as evidence under the protection of the court. If the court decides that they are evidence, I will give them to the court.

Cross-int. 196. What concern have you in the question whether they become evidence or not?

Ans. As my private property they are under my control, but if evidence before the court, it is my duty to submit them to the court, and relinquish my control of them—submit them to the keeping of the court, I mean.

Cross-int. 197. Is that the best answer you can give to that question?

Ans. Yes.

Cross-int. 198. The value you attach to them as private property among the considerations which induce you to decline passing them to counsel for examination?

Ans. No; it is the manhood right to control my own property.

Cross-int. 199. Is that all?

Ans. That is all that influences me in declining.

(Counsel for respondents give notice that they shall object to the use of this deposition or examination in evidence, because of their being debarred of the usual means and opportunities for the cross-examination of this witness as to the various examinations and measurements made by him, or purporting to be made by him, as already apparent upon the record.)

Cross-int. 200. (Rest of the examination made de bene only.) What do you mean, in one of your answers, by the term "photographic tracing?"

Ans. Please read that one of my answers in which I use that term.

Cross-int. 201. What do you mean by "a photographic tracing?"

Ans. I asked the magistrate to read the answer in which I used the term.

(The magistrate—the examination already covering one hundred and two folio pages—having no knowledge where, if at all, the
347 witness has used the phrase, and not deeming compliance with the witness's request necessary to his answering the question as put, declines to comply with the request, which might involve reading the whole examination to this point.)

Cross-int. 202. You have stated, that in your Coast Survey division, tracings are sent to you to be photographed, and that you know a good or bad tracing immediately. How do you know it in such case?

Ans. I know it immediately, that is, through my personal inspection, and not through the medium of another.

Cross-int. 203. From what indicators of its badness or goodness?

Ans. I do not conceive that here I can enter into a full description of tracings. Certainly my long acquaintance with tracings should enable me to judge of tracings.

Cross-int. 204. Please to repeat the question. (To the examiner, who does so.)

Ans. I have already answered the question, according to the best

of my judgment and understanding relative to it. I think I am capable to define in writing the characteristics of tracing, but I cannot do it here, before this court, verbally. I might also say that I have been repeatedly warned by the magistrate not to consume time.

Cross-int. 205. Time is of less consequence than the equal rights of parties. Please answer the question.

Ans. I have already fully and completely answered the question, to the best of my understanding and ability under the circumstances, here.

Cross-int. 206. Then, when a tracing of a drawing comes to you from the drawing division, and you know its goodness or badness immediately, are you unable to explain how you know its goodness or badness?

Ans. I cannot here enter into a minute and critical description of the characteristics of tracings.

Cross-int. 207. Why not, if it is essential to inquire into your own capacity?

Ans. Because I am accustomed to writing out my ideas. The circumstances here are not favorable.

Cross-int. 208. Then you have no ideas to state?

Ans. Nothing more than I have stated.

Cross-int. 209. Tracings of what come to you from the drawing division?

348 Ans. It has already been so very often stated, tracings from drawings.

Cross-int. 210. Drawings of what?

Ans. Topographic and hydrographic drawings, called topographic and hydrographic sheets. Tracings of various other drawings, also.

Cross-int. 211. What other drawings?

Ans. Hand-reductions of plane-table sheets or hand-drawn maps. Better say hand-drawn maps, it will be more intelligible.

Cross-int. 212. Please refer to some Senate documents and photographic journals, in which are articles of yours.

Ans. In Seely's American Journal of Photography, in a number published some years past—may be some six or seven years ago—is a Senate document—no, it's not a Senate document—I don't know whether it's a Senate document or not—published by permission of the Secretary of the Treasury, and signed J. E. Hilgard, and giving the measures of the performance of the globe lens. I done the work there related, and wrote every word of that letter. The letter was a report from me to the assistant in charge of office, and appears as such in succeeding Coast Survey reports. In the Philadelphia Photographer for September 1866, and for March 1867, are letters from me giving the method of obtaining absolute size in photographic reduction.

Cross-int. 213. Where are the dividers you used in making the measurements you have given?

Ans. At the Parker House.

Cross-int. 214. Will you produce them for inspection?

Ans. Yes; I can go round there and get them.

(The witness goes 11.20 a. m., returns 11.33, and produces the dividers.)

Cross-int. 215. Their expansion is not regulated by any screw, is it?

Ans. Yes, sir; there's the hair-screw on the side.

Cross-int. 216. Do you mean to testify that that screw has anything to do with the expansion of the dividers?

Ans. Yes.

Cross-int. 217. Does it affect anything more than one of the legs?

Ans. Nothing more than the expansion of the legs.

Cross-int. 218. When the legs are set at any particular angle, is there any arc or fastening to keep them fixedly in that angle?

Ans. Oh, no; that would be a crudity on such dividers as they
349 are, for such purposes as they are used. They are firmly fixed by the clamp on the head.

Cross-int. 219. Do they not open and shut freely?

Ans. Yes; but are sufficiently rigid for their purposes.

Cross-int. 210. Could not one of these legs be detached without in any way affecting the spring and screw in the other?

Ans. I don't comprehend what is meant by the question. These are an approved pair of hair dividers, used in the Coast Survey office.

Cross-int. 211. One of the legs is only connected with the other by the pivot at the top, is it?

Ans. By the pivot and the clamps.

Cross-int. 212. What do you mean by "the clamps?"

Ans. The discs of metal that hold the instrument together at the head.

Cross-int. 213. You mean the round discs at the ends of the pivot?

Ans. I mean the attachment is by the aid of what the instrument-makers call the cheeks and the clamps.

Cross-int. 214. Please to repeat the question. (The examiner does so.)

Ans. I do not mean the round discs exclusively. The legs are champed both by the discs and the cheeks.

Cross-int. 215. Please to repeat the question. (The examiner does so.)

Ans. Those round discs at the ends of the pivot are called clamps by the instrument-makers.

Cross-int. 216. The cheeks have nothing to do with fixing the angle of opening, have they?

Ans. The cheeks maintain the angle by giving rigidity.

Cross-int. 217. Please to testify upon oath whether the cheeks regulate the extent of the angle of opening.

Ans. Yes; the pressure of the cheeks on the other, together with the hair-spring, regulate the extent.

Cross-int. 218. Describe the nature of the cheeks.

Ans. The flat surfaces at the head of the instrument, pressed together by the clamp.

Cross-int. 219. These are found in all dividers, are they not?

350 Ans. I have not examined all dividers.

Cross-int 220. In all you have seen ?

Ans. No.

Cross-int. 221. The cheeks are flattened portions of the respective legs, are they not ?

Ans. They are flat portions of the dividers attached to the legs.

Cross-int. 222. So that when the legs are approached together, the single cheek of one leg is passed through the two cheeks of the other; is it not so ?

Ans. Oh, no; the flat portions under the clamps are what the instrument-makers call the cheeks.

Cross-int. 223. When these dividers are opened, is there any connection between the two legs except the pivot ?

Ans. Yes; they are connected by the pivot, by the cheeks and by the clamps.

Cross-int. 224. Explain exactly what cheeks and clamps are.

Ans. The clamps are discs on the ends of the pivot. The cheeks are the rubbing surfaces under the clamp and around the pivot.

Cross-int. 225. If it were not for the pivot, what would connect the legs ?

Ans. the mere friction of the cheeks might possibly connect them, but if the pivot were taken out the instrument might possibly fall apart.

Cross-int. 226. By what power are the legs made to move on the pivot ?

Ans. An incongruous question. The cheeks are moved on each other and the pivot by the power of the person using the dividers.

Cross-int. 227. You mean by the hands of the person using the dividers ?

Ans. Yes.

Cross-int. 228. The scale of which you have spoken, and which you have used, is a metallic parallelogram with distances marked on it, is it not ?

Ans. Yes; it is.

Cross-int. 229. What spectacles are those which you have had on during this deposition ?

351 Ans. A pair that I brought from Washington with me ?

Cross-int. 230. Are they convex outwardly, or what ?

Ans. I am long-sighted, and need to wear convex glasses, and did wear them.

Cross-int. 231. Who has read that manuscript book you have in your hand, besides yourself?

Ans. No mortal has read a line of it besides myself.

Cross-int. 232. You have your dividers now with you; without any reference to your minutes, please to measure No. 271, signature of F. W. Palfrey, on Plate 11, and state its length.

Ans. It's impossible that I should state its length without having a scale to refer to. Moreover, that would be work. I have already stated that I could do no more work.

Cross-int. 233. Do you decline to use the same scale that you have already used ?

Ans. I decline to do any more work. I have already stated why.

Cross-int. 234. In our privilege of cross-examination, we desire to test your skill in making the measurements you have already sworn to. Do you decline so simple a test or proof of your capacity?

Ans. I certainly have no consideration of the purpose for which the thing is desired. I have already fully stated that I can make no more measurements. The objects I measured are the evidences of my performance.

Cross-int. 235. You have stated that Wilde, 59, original, measured four hundred and twenty dmm., and its enlargement thirteen hundred and one, (1,301;) and that Wilde, 35, original, measured four hundred and seventy-five, (475.) At the same rate of enlargement, what ought the latter, enlarged, to measure?

Ans. Will the magistrate read my deposition in chief in which I so stated? (The magistrate does so.) I should have to go to ciphering, and I am not in the condition and circumstances here to do any more than testify to what I know.

Cross-int. 236. Please to cipher, and do it.

Ans. I have already stated that I cannot do it here, under present circumstances. I am not in circumstances to work.

352 Cross-int. 237. Please examine the annexed not very complicated problem, and say if it is correct, as far as the computation is made.

Ans. This is ciphering, which is work. I can do no work here. I can only say what I know here.

(The paper was—420 : 1301 : : 475

475

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9107
5204

420) 617975 (1471
42

197
168

299
294

550
420

Cross-int. 238. You have said that the original R. C. P., 15, measured six hundred and forty-three (643) dmm., and its enlargement two thousand and fifteen, (2,015;) and that R. C. P., 36, original, measured six hundred and seventy-eight (673) dmm.; at the same rate of enlargement, what should 36, enlarged, measure?

Ans. In my deposition in chief, I gave my honest convictions from my memory and memorandum. When I stated that they were enlarged the same, I meant the same within inappreciable quantities, or the limits of error. I cannot consent to do ciphering or other work here, for reasons which I have already repeatedly stated.

Cross-int. 239. Please look at the calculation hereto annexed, and see if it is correct or not, so far as it goes.

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643 : 678 : : 2015

678

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14105
12090

643) 1366170 (2125
1286

801
643

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3215

Ans. I decline to do so as being work.

Cross-int. 240. Are you aware that the variation in these plaintiff's enlargements, which you have approved, is the same as in these defendants' enlargements, which you have condemned, to wit, those referred to in the foregoing computations?

Ans. I am not so aware, because I have distinct recollection, whatever the numbers may be that I reported, the inaccuracy in the plaintiff's enlargements were trifling or inappreciable, while I have distinct recollection that in the defendants' enlargements amounted to the thickness of the down-stroke in letters, half-letters, and more. If I committed errors in my memorandum, it did not apply to the facts at the time.

Cross-int. 241. When you stated that the difference in the ratio of the two enlargements of the last computation was one in a hundred and fifty, were you aware that your own figures show it to be less than one in two hundred?

Ans. No. I reply further by my preceding answer.

354 Cross-int. 242. In your dividers, the pivot is not movable in reference to the legs, is it?

Ans. Yes; it's movable in reference to the legs. I don't propose here to give accounts of instruments.

Cross-int. 243. Explain what you mean by the first part of your answer.

Ans. I mean to answer the question asked me about the pivot in reference to the legs.

Cross-int. 244. Please repeat the question. (The examiner does so.)

Ans. I mean to answer the question asked me.

Cross-int. 255. Is there any means of moving the pivot so as to shorten the length of the legs.

Ans. No.

Cross-int. 266. How many legs to it are there?

Ans. Two legs to a pair of dividers.

Cross-int. 267. In testing the plaintiff's photographs, as you have testified, how many corresponding points did you measure from in each signature?

Ans. Corresponding to what? (Counsel and examiner agree on an explanation by examiner—i. e., e. g., from left top to right top in a pair, etc.)

Ans. Two.

Cross-int. 268. Why not more?

Ans. Two were sufficient, in my opinion.

Cross-int. 269. Would that be enough to show that the enlargements were correct?

Ans. Yes; I think so.

Recess—1.23 to 2.23.

(On hearing his deposition read, and on coming to the sentence, near the end of the answer to the thirty-first direct, "the variation is as much as the fiftieth of an inch in three inches," the witness says, "I think it was 'as much as the thirtieth of an inch in three inches;' that's my recollection."

On hearing the sentence, in the answer to cross-interrogatory twelve, "I have frequently to inspect the work of the drawing department," witness says that he thinks he said "work that has been done in the drawing department," and wishes it to stand so. On hearing the answer to cross-interrogatory seventy-five read, the witness requests that "seeing" be inserted after "before" and before "the signatures."

On hearing the answer to cross-interrogatory one hundred and fifty-one read, the witness states that he desires "and after" substituted for "or, rather.")

355

GEORGE MATHIOT.

Deposition of John C. Crosman.

John C. Crosman, of Boston, aged near sixty-three years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that his examination is to be made de bene esse, without waiving any objection to the testimony offered by the respondents in regard to the genuineness of the signature Sylvia Ann Howland to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

I am engaged in drawing—more on photographs than on originals—drawing portraits in Studio Building, in Boston. For twenty years I pursued the business of an engraver—in this city most of the time. I engraved on wood, and the range of the business was almost unlimited. For the last fifteen years I have been engaged in drawing, mainly.

4.20 p. m.—Adjourned to Thursday, May 2, 1867, 10 a. m., at request of counsel for plaintiff.

THURSDAY, *May* 2, 1867—10 a. m.

Int. 1. State whether or not you have acquired any, and, if so, what knowledge of tracing, and in what way, during the years in which you say you have been engaged as an engraver on wood, and in drawing.

Ans. When I commenced engraving, and for several years after, every subject engraved was first traced and then transferred to
356 the wood. I traced through thin tracing paper usually, fastening the paper on the subject to be traced. The paper was sometimes fastened with wax, sometimes with pressure—springs or weights. When greater accuracy or great accuracy was required in the tracing, I used thin, dry gelatine, made and sold under the name of glass paper; and sometimes thin mica; and upon the mica or glass paper made the tracing with a needle-pointed tracing point, or etching point. The lines made on the glass-paper or thin gelatine—dry gelatine—were then filled with fine red chalk, by brushing the chalk on, or rubbing the chalk on, and the chalk then transferred to the wood. That answers that question, except, perhaps, I ought to say, that within a few years past photography has been used instead of the tracings. Sometimes in drawing, I make tracings on tracing paper, then blacken the back side of the tracing paper, after the tracing has been made, and get the outline on another piece of paper, by going over the traced lines a second time with pressure sufficient to transfer the black pigment on to the paper on which the drawing is to be completed; but this is seldom done by me, as most of my drawings are made by the eye.

Int. 2. During the time referred to in the last question, please state to what extent you yourself have worked in tracing, and upon what, if anything, you have been longest engaged in tracing.

(Last clause of question objected to as immaterial.)

Ans. Upon any one class of work, I have spent more time in tracing writing; but that would form a very small portion of the amount of tracing I have done—the various matters I have traced.

Int. 3. Will you please state to what extent you yourself have traced, with reference to your skill as a tracer?

Ans. I don't understand the question.

Int. 4. Please understand the question as referring to your opportunities of learning or knowing how to trace skilfully or otherwise, and then answer it.

(Objected to as leading in form.)

Ans. I learnt by years of practice, tracing many thousands of subjects, some of which required great accuracy.

Int. 5. State whether or not you have traced, and, if so, to what extent, writings for copies in writing-books.

(Objected to as immaterial, and as entering unnecessarily into matters of detail.)

Ans. I traced and engraved all the copies in a writing-book
357 of a writing-master by the name of Badlam, of Chester, Vermont. There was, I don't remember how many volumes or numbers the book consisted of, but I think six—five or six. I don't remember how many pages there were in a book, but I suppose about the number usual in writing-books. Perhaps fifteen or twenty sheets, perhaps twenty-four. I made the engravings as nearly like his writing as I possibly could.

Int. 6. About how long were you engaged on this last work?

Ans. I can't tell. I don't remember, but I remember that it was a very long and very tedious piece of work; so tedious that I have never done anything like it since. I have only engraved two or three fac-similes of writing since, not writing-books. I can't remember exactly when I did this work on the writing-books. I think it was about 1848, perhaps, as near as I can remember—say between 1846 and 1850.

Int. 7. State whether or not you have any, and, if so, what knowledge of photography, and how and during what period you have acquired it. State carefully and fully.

Ans. I have been familiar with photography and all photographic operations since its introduction into this country. It interested me, as an artist, very much, and I paid great attention to it. I have had a great many pictures made by all the best photographers in this city, and have been present at the making of them, and directed, sometimes, the operations, and have made some pictures myself.

Int. 8. State whether or not you have made any, and if so, what experiments in the art of photography, or in connection with the art, and have obtained any and what patent thereof.

(Objected to as immaterial.)

Ans. I have made several experiments in photography, or in the chemicals—say the combination of chemicals, used in photography—sometimes alone and sometimes in connection with photographers, or with a photographer, and last summer or fall, or both—last summer or fall, I invented and last winter patented, in this country and in France and England, a new mode of preparing paper for photographers.

Int. 9. What result, if any, is attained by this new mode of preparing paper, and what is it called?

(Objected to as immaterial.)

Ans. The coating is very even on the surface of the paper, the material put upon it being distributed more equally than by any other process; consequently, making a better picture, a more
358 perfect picture. I think it was patented under the title of a

new and improved method of coating paper and other substances for photographic and other purposes.

Int. 10. State whether or not you have any, and, if so, what knowledge of what is known as the carbon process in photography.

(Objected to as above.)

Ans. I am familiar with the carbon process; have made some pictures by it, and my patent, just alluded to, has more especial reference to preparing paper for the carbon process, but is valuable, also, for preparing paper for the silver process.

Int. 11. State whether or not you have any, and, if so, what knowledge or acquaintance, and for what period, of the lenses and of the character of the lenses used in photography.

(Objected to as above.)

Ans. I have been familiar with the working of all the better class of lenses that have been introduced into the market; such as the Voigtlander, Dallmayer, Chevalier, Jamin, Steinhill, and Harrison's globe; Harrison and Schneitzer were the patentees. Of all these lenses, the globe makes much the truest figure on its field. I will say that the Steinhill, I think, distorts the figure very much—more than the Voigtlander, in some respects—in landscape.

Int. 12. State whether or not, during the last thirty-five years, you have to any, and, if so, to what extent, noticed or had occasion to notice the peculiarities and characteristics of different handwritings and signatures, and have or have not such knowledge as, in your opinion, would enable you to distinguish false or simulated from genuine signatures and writing.

(Objected to as leading, and as asking the witness a question of mixed law and fact, to be determined only by the court, to wit, his competency as an expert.)

Ans. I have had considerable knowledge of writing. I have engraved a great many signatures, and studied them very carefully. In regard to distinguishing false from true signatures in writing, I should only use the same means as I would to judge of a true and false bank-note. It is the business of an engraver, and has been the chief business of the best part of my life, to see differences and resemblances in all objects. I would add, the general resemblances and differences, and the minute or local differences and resemblances; and I believe I can see those as well as most artists.

359 Int. 13. State whether or not you have been engaged in the examination of different signatures with reference to the question of signatures repeating or covering each other; and, if so, when you were first employed, and by whom.

Ans. I was first so employed by Mr. Thaxter and Mr. Bartlett, about the 7th of December last. I think it was the 7th of December last.

Int. 14. State whether or not you at that time had any, and, if so, what knowledge or opinion in regard to the kinds of writing which would or would not be more likely to cover or repeat themselves.

(Objected to for form and substance.)

Ans. I had little knowledge, but I had an opinion that writing

written in what we call a cramped, hard hand, would be more likely to repeat itself, or to be repeated, than that written with more freedom—more sweep of stroke. In other words, that writing that was written with a short lever, as from the hand and wrist or fingers, would be more likely to cover and repeat itself than that written from the arm or elbow, with more freedom or sweep.

Int. 15. State, upon such employment, whether or not you examined any, and, if so, what signatures. Give the names.

(Objected to as leading, and, so far as it relates to any signatures other than those of Sylvia Ann Howland, immaterial and incompetent.)

Ans. I examined the signatures of Sylvia Ann Howland, John Quincy Adams, I suppose—but it was written J. Q. Adams—C. A. Walker, Stephen Fairbanks, Joseph B. Spear, Saml. W. Swett; I can't remember them all. (The witness now refreshes his recollection by looking at his memoranda.) The words "Very respectfully," the words "Your obedient servant," signature F. W. Palfrey, Geo. C. Wilde, Moses Kimball, Theodore Metcalf, Theo. Metcalf, J. M. Forbes—written I. M. Forbes & Co., I think it was.

Int. 16. State how you obtained the signatures which you thus examined, and whether or not you made any suggestions in regard to procuring the same, and, if so, what suggestions.

(Objected to as leading in form, and as calling for evidence immaterial in any aspect of the cause, and for conversation between the witness and third persons not under oath, and as otherwise wholly incompetent.)

Ans. I obtained them from Mr. Thaxter and Mr. Bartlett,
360 most of them. I got myself the signature of Theodore Metcalf, the signature of C. A. Walker, and the signature of Moses Kimball. I believe that's all I got myself. I suggested the names of two or three or four of the signatures that were procured by Mr. Bartlett or Mr. Thaxter. Indeed, I think I suggested all but one or two.

Int. 17. State how, in what way, you made the examination of these signatures. I mean in reference to all, and not in regard to any particular one.

(Objected to for form, and, so far as it relates to any other signatures than those purporting to be those of Sylvia Ann Howland, as immaterial; and, especially, so far as it relates to any signatures not produced or put in evidence in the cause and verified as genuine, as immaterial and incompetent.)

Ans. I examined them by superposing one upon the other, then by tracing them, and superposing the tracings upon the written signatures, and by looking at them—studying them would have been a better word—as an artist does his proof, to see how nearly it approximates to the original in all particulars.

Int. 18. Why did you use tracings, as you have stated, after having superposed the originals?

Ans. Because I couldn't see well through the superposed paper, on account of the refraction and reflection of various rays of light

and the texture of the paper, whether they covered well or not, corresponded with each other well or not—coincided, I think, would be a better word.

Int. 19. Pease look at papers, marked F. W. P., 1, 10, and 15, and state whether or not the signature Sylvia Ann Howland to No. 1 could be traced on No. 10 and 15, by superposing, at the place where the signature Sylvia Ann Howland is on No. 10 and No. 15, with ease or with difficulty, and with or without skill or knowledge in tracing.

(Objected to as leading in form, and the respondents give notice that they shall object, not only to the answer to this question, but to all testimony that is dependent on and connected with such answer.)

Ans. They couldn't be well traced through the paper, if you mean in that way, at all, by anybody, I will say, without great skill, very great skill.

Int. 20. Please state what number of the signatures of Mr. Wilde you examined, how you examined them, and how many dif-
361 ferent changes, if any, of comparisons you made.

(Objected to as above, and, so far as it relates to any signatures other than those of Sylvia Ann Howland, as immaterial.)

Ans. Sixty-one of the signatures were examined by me, making three thousand seven hundred and twenty-one (3,721) comparisons. I examined them by superposing one upon the other, on a glass, in front of a window, and also by tracing and superposing the tracings. I examined them all on the glass, by transmitted light, but only traced such as I thought would cover each other with accuracy.

Int. 21. State what number of each of the other signatures (except those of Sylvia Ann Howland) and writings which you have said you examined, you did examine, and the number, if any, of changes of comparisons in the comparison of each, and how you made the examination.

(Objected to for form, and, as referring to other signatures than those of Sylvia Ann Howland, as immaterial; and, so far as it relates to signatures unproved and unproduced, as immaterial and incompetent.)

Ans. There were one hundred and ten (110) of John Quincy Adams, making twelve thousand one hundred (12,100) comparisons. C. A. Walker's signatures were in a book—were in two books, bound volumes, and the two volumes contained five hundred and five (505) of his signatures. I made but eight tracings of the Walker signatures, making four thousand and forty (4,040) comparisons. Fifty-six (56) signatures of Joseph B. Spear, making three thousand one hundred and thirty-six (3,136) comparisons. Fifty-six copies or repetitions of the words "Very respectfully," making thirty-one hundred and thirty-six (3,136) comparisons. Fifty-six (56) copies of the words "Your obedient servant," making three thousand one hundred and thirty-six (3,136) comparisons. One hundred and nine (109) signatures of Stephen Fairbanks, making eleven thousand eight hundred and eighty-one (11,881) comparisons. Eighty-eight signatures of F. W. Palfrey, making seven thousand seven hundred and

forty-four (7,744) comparisons. Sixty-four (64) signatures of Saml. W. Swett, making four thousand and ninety-six (4,096) comparisons. Twenty-eight (28) signatures of Moses Kimball, making seven hundred and eighty-four (784) comparisons. Twenty-six (26) signatures of Theodore Metcalf, making six seventy-six (676) comparisons. Twenty (20) of Theo. Metcalf, making four hundred (400) comparisons. Twenty-five (25) signatures of J. M. Forbes and Company, making six hundred and twenty-five (625) comparisons. I examined them by superposing one signature over another, each one over each other one, placing one upon a glass plate in front of a window, the other one on that one, and looking at them by transmitted light; also by tracing them, and superposing the tracings upon the originals. I examined them all by transmitted light on the glass, but I traced only such as I thought promised to be useful for the purpose required. I ought to state that the signatures of C. A. Walker, being in a book, could not be examined on the glass by transmitted light, and that I traced all his signatures that I used, eight in number.

362

Int. 22. State whether or not you photographed any, and, if so, which of the signatures and writings of which you have testified as having examined them, and, if so, please identify such signatures and writings.

(Objected to as immaterial, so far as it relates to any signatures other than those of Sylvia Ann Howland.)

Ans. I photographed, with the assistance of J. W. Black, the signature of J. Q. Adams, on papers marked Adams, F. W. P., and numbered respectively, 101, 20, 12, 58, 51, 49, 24, 80, 7, 54, 84, 83; also the signature of C. A. Walker, to papers marked Walker, F. W. P., and numbered respectively, 679, 670, 669, 656, 633, 555, 623a, 575, 579, 582, 623; also the signature of Joseph B. Spear, and the words "Very respectfully," "Your obedient servant," preceding the same, on papers marked Spear, F. W. P., and numbered respectively, 54, 33, 41, 5, 20, 43, 34, 6, 35, 44, 48, 29, 40, 52, 24, 27, 49, 8, 45, 39, 10, 26; also the signature Stephen Fairbanks on papers marked Fairbanks, F. W. P., and numbered respectively 1,423, 2,365, 2,065, 205, 1,347, 706, 311, 1,837, 2191, 1,860, 2,150, 843, 822, 1,838, 740, 312, 619, 1,660, 370, 114, 747, 355, 2,203, 1,583, 272, 422, 2,074, 1,682, 2,021, and one marked Fairbanks, Dividend 41, F. W. P.; also the signature F. W. Palfrey, on papers marked Palfrey, W. S. D., and numbered respectively, 277, 285, 206, 260, 226, 170, 171, 159, 174, 218, 214, 163, 279, 282, 274, 270, 271, 238, 246, 265, 216; also the signature of Saml. W. Swett, on papers marked Swett, F. W. P., and numbered respectively, 152, 29, 48, 127, 38, 39, 36, 144, 143, 35, 57, 64, 30, 34, 37, 12, 41; also the signature Geo. C. Wilde, on papers marked Wilde, F. W. P., and numbered respectively 4, 11, 3, 59, 8, 69, 35, 5, 17, 56, 25, 14, 13, 6, 1, 19, 27, 52, 29, 44.

363

Recess—1 to 2.

Further examination of this witness adjourned to **Friday, May 3,** 1867, 9.30, a. m.

FRIDAY, *May* 3, 1867—9.30 a. m.

Int. 23. State the purpose for which you made the photographs which in your last answer you say you made, and state why you did not photograph all of any one signature that you examined, as for instance that of Wilde, and by what, if anything, were you guided in your selection from any one signature to photograph.

(Objected to as above, and as immaterial and incompetent.)

Ans. I made them for the purpose of showing how they would coincide with each other. I didn't photograph the whole, because those that I omitted I was satisfied, from my examination of them, that they differed very widely from each other, or widely from each other. I was guided in my selection by my judgment from the tracing placed over it.

Int. 24. State whether or not you made any, and, if so, what photographs of the signatures, which you say you examined, of Theodore Metcalf, Theo. Metcalf, Moses Kimball, and J. M. Forbes and Company, and if not, why not? And state what, if any, work you did on those signatures.

(Objected to for form and substance.)

Ans. I examined Moses Kimball's signatures, a few at a time, as I received from him only five or six in the first instalment—all he had. From that small number, five or six, I found two that coincided in form, very closely, and photographed them, to ascertain if their enlargement would appear as perfect as the original checks, the original signatures. At the commencement of the following month, after receiving the first parcel, I received six or eight more, and so on, from month to month, a few at a time, till the number reached what I stated in one of my former answers, twenty-six, I think. I photographed no others of the signatures mentioned in the question. I made tracings of Theo. Metcalf and of Theodore Metcalf, with the intention of photographing them, and I made tracings of several of Mr. Kim-
364 ball's signatures, with the same intention. I made no tracings of the Forbes, but I have examined several of them by superposing one upon the other, and, so far as I examined them, believed that they would coincide with each other when photographed on a large scale, as or about as well as the average of those that were photographed. I did not do any further work, photographing or other, because I was requested by Mr. Thaxter to give all my attention to the printing and binding of the work that we had done. At the time he made the request, or gave me the order to stop all further examinations and photographing any new signatures, or any more signatures, I had five or six of Mr. Kimball's signatures ready mounted on the glass to be photographed, and if the order had come an hour later, they would have been placed on the negative—been photographed.

(Respondents object specially, in addition to the objection to the question, to so much of the answer as states any conversation with counsel for plaintiff, Mr. Thaxter, as mere hearsay, and to so much of it as states anything said to him by Mr. Kimball, for the same reason, and to the whole answer, as incompetent, immaterial, and otherwise, and they object generally to all evidence as to unproduced signatures.)

Int. 25. How much time have you spent since you say you were first employed in making the examinations, tracings and photographs of the signatures and writing which you have before testified to?

(Objected to, immaterial.)

Ans. With the exception of perhaps eight or nine days, and including the time given to the arranging and binding of the photographs in books, it is five months.

Int. 26. How constantly have you been employed during that time, and what portion of it, about what, was spent in examining the signatures, in tracing, in making selections to photograph, and in preparing them ready to photograph?

(Objected to as immaterial.)

Ans. That's a difficult question to answer, as I kept no account. I think, perhaps, three-quarters; probably more. I have been employed from eight to twelve hours a day. I suppose the time would average close upon ten—nine and a half, certain.

Int. 27. State whether or not you have had any, and, if so, what assistance, and for what length of time in examining and tracing any of these signatures.

(Objected to for form and substance.)

365 Ans. I had an assistant with me from the 3d day of January until the 11th day of February. In that time he worked, in examining and tracing the signatures, two hundred and sixty-four (264) hours. I paid him by the hour. I recollect the bill.

Int. 28. State whether or not, during all this time, since you were first employed, you have made any, and, if so, what examination of writing other than those which you have named, in the prosecution of this employment.

(Objected to as immaterial.)

Ans. No other, except the name of George S. Hillard that was endorsed on Theo. Metcalf's check. I forgot that—G. S. Hillard, I think, was the signature; and the little examination given to the name of Hillard was not by my direction, but contrary to my direction. The checks were examined by my assistant. I told him not to examine Hillard's signature, for I had no belief that it would coincide, one with another.

Int. 29. Please look at book marked R. vs. M., F. W. P., and state who arranged or prepared it, or under whose direction it was done.

Ans. Under mine.

Int. 30. Please look at the plate marked F. W. P., Photograph A, and the rider, marked F.W. P., Rider A, and state what they are, and what, if anything, you had to do with their being in their present condition,

Ans. I have no doubt they are photographs from the signatures of Sylvia Ann Howland. F.W.P., Photograph A, was mounted by my direction in its present state. F. W. P., Rider A, was made transparent or semi-transparent, with paraffine, by my direction.

(Respondents object to the answer, because it is apparent, the question being put and answered, that there must be better evidence of

the origin, nature, and character of these papers than the opinion of the witness. Respondents will object to the competency of all testimony which connects itself with and is made dependent upon the papers so inquired of.)

Int. 31. State where you obtained the photographs last referred to? (Objected to for form and substance, and as above.)

Ans. They were put into my hands by Mr. Francis Bartlett.

Int. 32. State whether or not you have made any, and, if so, what examination of those photographs, with any and what photo-
366 graphs contained in the volumes now shown you, marked R. C. P., Book , with reference to the question whether they were or were not taken from the same negative, and, if so, with what result. (Objected to as last question above.)

Ans. I made such an examination. I made the examination first at the clerk's office of the United States circuit court, and I make it here again; and I find them to be from the same negative as the impressions—the photographs on Plate 5, Book 1, Volume 2—and from the same negative as the rider on the opposite page.

Int. 33. Take said book R. vs. M., F. W. P., and state what plates from 1 to 14, inclusive, and riders in the pockets of said plates, are; and by whom and under whose direction the work was done in preparing and finishing them.

(Objected to for form and substance, and especially so far as it refers to any other signatures, or photographs of signatures, than those of Sylvia Ann Howland.)

Ans. They are photographs of the signatures before alluded to in my testimony, with the exception of those of Moses Kimball, Theo. and Theodore Metcalf, I. M. Forbes & Co., and G. S. Hillard. They were all of them selected by me for photographing, from signatures on checks and other papers, and all prepared by me, all mounted by me, for photographing, at my room in Studio Building—at my studio in Studio Building. I took them from there to Mr. Black's photographic gallery, where they were photographed by Mr. Black and myself.

Int. 34. State whether or not this work was done with any, and, if so, what degree of care and accuracy.

(Objected to as leading, and as calling for the opinion of the witness as to the manner in which the work was done, instead of describing it, so as to enable the court to judge how the work was done.)

Ans. It was done with every possible care that Mr. Black and myself could exercise. I found the camera box in which it was proposed to make the negatives considerably out of true, and Mr. Black had it repaired and made accurate, or as nearly so as we could measure it. We arranged the tail of the camera box so that the shield holding the ground glass at the tail of the box would always be parallel with the front of the head of the box, at all times, whether the tail was moving or stationary. I took great care—he took great care— I took great care—either, or both—that the signatures to be copied should stand perpendicular, or as nearly so as possible, to a line parallel
367 with the axis of the lens, and so that such line would impinge

on the central part—on the centre, we'll say—of the ground glass. To prevent any movement of the box, or of the glass holding the signatures to be copied, during any part of the operation, I stood at the head of the camera, to make sure that the positions attained were not disturbed.

Int. 35. State in regard to these plates and riders, what they represent as to size when compared with the originals from which they are copied.

(Objected to as immaterial, especially so far as it refers to any other signatures than those of Sylvia Ann Howland.)

Ans. The photographs on Plate 1 and Plate 2 are photographs very nearly the exact size of the originals. Some of them, in some of the books, I believe to be exact in size with the originals, because I tested one or two from each negative, and they all ought to be in correspondence with the originals, excepting the group of four signatures of Sylvia Ann Howland on Plate 2, marked R. C. P., 4, 42, 47, 19, corresponding with the same figures—the same signatures—on the bills of sale, and one signature which I forget the name of; one other signature, a little larger than the original, a very little larger than the original. The riders in the pockets opposite are from the same negatives as the opaque photographs. Plates from 3 to 14, inclusive, are enlarged copies of the originals, and are enlarged about three times the size of the originals. There was no effort made to enlarge the signatures photographed on any definite scale, but only to be sure they were as large, as much larger than the originals, as the enlarged copies of Sylvia Ann Howland on Page 5, Volume 2, Book 1, R. C. P., are larger than the originals of the Sylvia Ann Howlands, on papers marked 1, 10, and 15. The riders in the pockets opposite pages from 3 to 16, inclusive, are from the same negatives as the opaque photographs.

Int. 36. State in regard to each class of photographic signatures, whether of large or small size, whether the same were or were not photographed with reference to each other upon the same or a different scale. Please understand the question as referring to classes of the same signature, and not to the scale of different signatures.

(Objected to as leading, and, so far as it refers to any signatures other than those of Sylvia Ann Howland, as immaterial.)

Ans. I don't understand the meaning of "class" in the phrase
368 "class of photographic signatures." I think I can answer it well enough. If the word "classes" means the signatures of each individual, they are all one scale. I have before stated that there was no scale aimed at in the enlarged signatures.

Int. 37. State how the photographic printing was affixed to the plates referred to, and whether or not such prints have been thus placed with or without any, and, if any, what degree of distortion.

(Objected to as above.)

Ans. They were affixed there by a solution of India-rubber or caoutchouc in benzole, and one or two other hydrocarbon oils. I believe without any degree of distortion. I never discovered any.

Int. 38. State what, if anything, you did to the riders referred to.

with a view to making them transparent, and whether or not that had any, and, if so, what effect as to producing distortion.

(Objected to as leading, and as above.)

Ans. I charged them with paraffine to make them semi-transparent, and I believe they are free from distortion. If the riders were free from water when the paraffine was applied, they are undoubtedly free from distortion—entirely free from distortion.

Int. 39. Please look at papers now shown you by the examiner, marked R. C. P., and numbered from 1 to 51, except 31, and state whether or not you have made any, and, if so, what examination of the signature Sylvia Ann Howland to those papers, and in what way such examination, if any, has been made.

Ans. I have examined them by looking at them, and by tracing them or having them traced, and by placing a tracing of each signature over each other signature, excepting the signature to the deed and power of attorney, numbered respectively 50 and 51.

Int. 40. Please look at plate marked F. W. P.,Plate 24, and at riders marked F. W. P., Plate 24, Riders 1, 2, and state what they are, and by whom they were prepared, and what, if any, accuracy.

(Objected to, form and substance.)

Ans. They are photographs from the signatures of Sylvia Ann Howland, from the bills of sale marked R. C. P., and the photographs are numbered to correspond with the numbers on said bills of sale. I prepared them for photographing, and they were photographed with the same care and with the same instrument
369 that the photographs in the book R. vs. M., F. W. P., were made with, and as before described in a previous answer.

Int. 41. State to what, if anything, the marginal numbers on the plates and riders in Book R. vs. M., F. W. P., from Plate 1 to 14, inclusive, refer.

(Objected to as immaterial.)

Ans. They refer to the photographs on those pages, and to the signatures on the checks or other papers on which the originals are written.

Int. 42. State how those numbers refer to the signatures on such checks and other papers—whether to the numbers thereon, or how otherwise.

(Objected to as above.)

Ans. The numbers on the photographs refer to the numbers on the checks and other papers.

Int. 43. State whether or not you have made any, and, if so, what examination of the signature Sylvia Ann Howland to papers F. W. P., 1, 10, and 15, and in what way, if at all, you made such examination.

Ans. I made such examination by looking at the signatures very carefully; by superposing them one upon another; by tracing them, and superposing the tracings upon the originals, each tracing upon each original, or each tracing upon each other of the originals. I have examined them enlarged to nearly or quite three times their

size by the photograph; I would like to say as enlarged by the photograph.

Int. 44. State whether or not you have made any, and, if so, what examination, and in what way, of the photographs upon the plates and riders in the book R. vs. M., F. W. P., from Plate 1 to 14, inclusive, and of the original signatures and writing from which you say said photographs were made or taken, with reference to the question as to how they covered by superposition as compared with the manner in which the signature Sylvia Ann Howland to papers F. W. P., 10 and 15, and the signatures on plate marked F. W. P., Photograph A., numbered 10 and 15, cover, when severally superposed over said signature to F. W. P., 1, and said signature on said plate, numbered 1, using, of course, the originals over the originals, and the photographs over the photographs.

(Objected to as leading in form; as assuming a fact as already testified by the witness to which he has not testified, to wit, that the photographs on plates from 1 to 14, inclusive, were from original signatures, so far as it refers to any other signatures than those of Sylvia Ann Howland, or what purport to be photographic copies of the same; and so far as it relates to any comparisons of such other signatures, as immaterial and incompetent; so far as it refers to Photograph A, and the riders to the signatures of J. Q. Adams and Stephen Fairbanks, as examination upon documents not yet identified and put in proof.)

370

Recess—1 to 2 p. m.

(Upon hearing the foregoing objection, counsel for plaintiff withdraws the questions, and puts the following:)

Int. 45. State from what the photographs of signatures and writing on the plates and riders in book marked R. vs. M., F. W. P., from Plate 1 to 14, inclusive, were made; and, if you have before identified any such, please refer, for brevity, to such identification in general terms.

(Objected to as above, so far as applicable.)

Ans. They were made from checks and papers—signatures to checks and papers—furnished me by Mr. Francis Bartlett and Mr. Thaxter, purporting to contain or have written on them the autographs of the persons whose names they bear. I have identified them once, by pencil marks and otherwise, in my answer to the twenty-second interrogatory.

Int. 46. Please answer now the interrogatory marked forty-four, and withdrawn previous to putting the last interrogatory.

(Objected to as before, the answer to the last question not having obviated the same.)

Ans. I have examined those signatures, as I have before said, I believe, by superposing one upon the other, by tracing them, and by superposing the tracings one upon another, superposing them on the signatures.

Int. 47. Now state, in detail, the results of such examination, in regard to the question of comparison in covering.

(Objected to for substance, and especially so far as referring to

any signatures or photographs of signatures other than those of Sylvia Ann Howland.)

Ans. I shall have to refer to my minutes, or spend half a day in examing the photographs or riders.

(Counsel for respondents will object to the use of any minutes, unless they are to be submitted to counsel for the purpose of cross-examination, and if the same course is to be pursued as was
371 pursued at the examination of Mr. Mathiot, they will object to the use of the examination in evidence. Counsel for plaintiff requests the examiner to rule that the witness may refer to any memoranda made by himself in the course of his examination, for the purpose of refreshing his recollection in answering. Counsel for respondents conceive that that requires no ruling from the magistrate, and adhere to the notice above given. Counsel for plaintiff renews his request for a ruling. The examiner rules that the witness may refer as suggested by counsel for plaintiff, that is to say, that he is to testify from memory, after refreshing his recollection, but is not to read from his minutes.)

Ans. I found upon superposing the signature of J. Q. Adams, No. 12 upon 101, that it covered better than signature F. W. P., 10, covered 1—a great deal better than 1 covered 10, and a great deal better than 15 covered 1. I found that 101 of J. Q. Adams covered 12 about the same as F. W. P., 1, covered 10. I found that 84, J. Q. Adams, covered 49 better than 15 covered 1, and as well as 1 covered 10. I found that 24, J. Q. Adams, covered 49 as well as 1 covered 10, F. W. P., and better than 15 covered 1, F. W. P. That 83 covered 7 better than 1 covered 10, F. W. P., better than 15 covered 1. That 20 covered 80 as well as 1 covered 10, and much better than 15 covered 1. That 51 covered 58 better than 1 covered 10—much better than 15 covered 1. That 54 covered 84 better than 1 covered 10, better than 15 covered 1—much better. (Counsel for respondents request examiner to ask the witness whether he is reading from his minutes. The examiner says, In thus giving your testimony, are you reading from your minutes? He replies, I am refreshing my mind from my minutes, as I was instructed by the magistrate I might do. I have no objections to recomparing the riders with the signatures, if the parties interested desire it; but that will take a great deal of time. The examiner inquires, at instance of counsel for respondents, Are you reading from your minutes, or only refreshing your recollection from them? He answers, I think that I am not reading from them, in the ordinary acceptation of the term.) In superposing the signature of C. A. Walker, on Req. 679, on 669, I found it covered as well as 10 covered 1—about as well—better than 1 covered 10, better than 15 covered 1. And 669 covered 679 as well as 10 covered 1, better than 1 and 10, better than 15 and 1. 582 covered 575 nearly as well as 10 covered 1, and 575 covered 582 almost as well as 10 covered 1, or quite as well,
372 better than 1 covered 10, better than 15 covered 1. 623 covered 656 better than 10 covered 1, better than 1, 10, better than 15, 1. Req. 623 covered Rec. 623 as well or better than 1 cov-

ered 10, nearly as well as 10 covered 1, better than 15, 1. Receipt 655 covers receipt 633 better than 1 covers 10—better than 10 covers 1, I should say—and much better than 15 covers 1. Rect. 623 to Rect. 655, better than 1 covered 10, better than 15, 1. The signature of Joseph B. Spear, 45 covers 10 better than F. W. P., 10, covers 1, better than 1 covers 10, better than 15, 1. 39 covers 10 better than 1, F. W. P., covers 10 better than 15, 1. 41 covers 5 about as well as 10 covers 1, better than 1 covers 10, better than 15 covers 1. 41, the words "Your obedient servant" covers better than 15 covers 1. 41 to 24, of "Joseph B. Spear," and "Your obedient servant," each better than 15 covers 1, and about as well as 1 covers 10. 52 covers 20 much better than 1 covers 10, or than 15, 1, in both lines of "Your obedient servant" and "Joseph B. Spear." 52 covers 27 better than 1 covers 10, better than 15, 1, in both lines "Your obedient servant" and "Joseph B. Spear." 49 covers 35, the words "Very respectfully," nearly as well as 10 covers 1, better than 1 covers 10, and better than 15 covers 1. 43 covers 20, the words "Very respectfully," nearly as well as 10 covers 1, better than 1 covers 10, better than 15, 1. 33 covers 8, the words "Your obedient servant," nearly as well as 10 covers 1, better than 1, 10, or than 15, 1. 33 covers 26 better than 1 covers 10, much better than 15, 1. 33 covers 54 as well as 1 covers 10, better than 15 covers 1. 6 covers 34, the words "Very respectfully," nearly as well as 10 covers 1, better than 1 covers 10, better than 15 covers 1. 40 covers 48, the words "Very respectfully," better than 1 covers 10, or 15, 1. 44 covers 35, the words, "Your obedient servant," nearly as well as 10 covers 1, much better than 1 covers 10, and very much better than 15 covers 1. The signatures of Stephen Fairbanks, 1,682 covers 2,074, 2,061 covers 2,021, 272 covers 422, and 1,660 covers 2,203, in the manner nearly as well as 10 covers 1. [When the fact is considered that Fairbanks's autographs are written with a very fine hair-line, and that he lifted his pen some nineteen or twenty times in writing each signature, and made, consequently, some eighteen or nineteen spaces between the letters, it stands here, I consider, that all of Stephen Fairbanks's signatures, as numbered on 373 the photographs, cover as well as 15 covers 1; and some nearly as well or quite as well as 1 covers 10. I think them as remarkable, for their similitude, taken altogether, as any signatures in the book.] (Respondents object to bracketed portion of answer as irresponsive and incompetent.) The F. W. Palfrey signatures, 246 covers 238 as well as 10 covers 1, better than 1 covers 10, much better than 15 covers 1; 246 covers 270 much better than 1 covers 10, very much better than 15 covers 1; 270 covers 271 better than 1 covers 10, very much better than 15 covers 1; 171 covers 170 better than 1 covers 10, very much better than 15 covers 1; 265 covers 216 better than 1 covers 10, and very much better than 15 covers 1; 206 covers 216 better than 1 covers 10, very much better than 15 covers 1; 206 covers 226 as well as 1 covers 10, better than 15 covers 1; 282 covers 279 nearly as well as 10 covers 1, better than 1 covers 10, much better than 15 covers 1; 282 covers 260 as

well as 1 covers 10, better than 15 covers 1; 163 covers 214 as well as 1 covers 10, better than 15 covers 1; 163 covers 218 better than 1 covers 10, much better than 15 covers 1. The name, "Palfrey," in No. 218, when 163 is placed over it by itself, without regard to the initial letters F. W., makes a very perfect fac-simile. 174 covers 159 as well as 1 covers ten, better than 1 covers 15—I mean better than 15 covers 1. The signatures of Saml. W. Swett, 41 covers 12 much better than 1 covers 10, or 15, 1, and nearly as well as 10 covers 1; 41 covers 30 better than 15 covers 1, and nearly as well as 1 covers 10; 34 covers 46 better than 15 covers 1, about as well as 1 covers 10; 12 covers 37 about as well as 10 covers 1, much better than 1 covers 10, much better than 15 covers 1; 12 covers 41 much better than 1 covers 10, much better than 15 covers 1; 37 covers 34 better than 1 covers 10, better than 15 covers 1; 37 covers 36 better than 15 covers 1; 37 covers 12 better than 1 covers 10, much better than 15 covers 1; 48 covers 127 nearly as well as 10 covers 1, better than 1 covers 10, much better than 15 covers 1; 127 covers 48 much better than 1 covers 10, much better than 15 covers 1; 144 covers 57 much better than 1 covers 10, much better than 15 covers 1; 29 covers 152 nearly as well as 10 covers 1, very much better than 1 covers 10, very much better than 15 covers 1; 29 covers 38 better than 1 covers 10, much
374 better than 15 covers 1; 143 covers 29 better than 1 covers 10, much better than 15 covers 1; 152 covers 29 better than 1 covers 10, much better than 15 covers 1. The signatures of Geo. C. Wilde, No. 11, covers 8 better than 1 covers 10, better than 15 covers 1, nearly as well as 10 covers 1, considering that his signature is written with a hair-line; 35 covers 8 about as well as 1 covers 10, better than 15 covers 1; 27 covers 8 better than 1 covers 10, much better than 15 covers 1; 59 covers 5 about as well as 1 covers 10, better than 15 covers 1; 35 covers 60 nearly but not quite as well as 1 covers 10, better than 15 covers 1; 56 covers 60 better than 1 covers 10, much better than 15 covers 1; 25 covers 52 better than 1 covers 10, much better than 15 covers 1; 3 covers 4 and 4 covers 3 nearly but not quite as well as 10 covers 1, much better than 15 covers 1; 29 covers 44 better than 1 covers 10, much better than 15 covers 1; 13 covers 14 as well as 15 covers 1; 13 covers 19 nearly as well as 1 covers 10, better than 15 covers 1; 17 covers 1 better than 1 covers 10, much better than 15 covers 1. In the group of Sylvia Ann Howland's signatures on page 24, No. 4 covers 42 better than 1 covers 10, much better than 15 covers 1; 4 covers 19 nearly as well as 1 covers 10, better than 15 covers 1; 4 covers 47 as well or better than 1 covers 10, better than 15 covers 1; 26 covers 23 better than 1 covers 10, better than 15 covers 1; 44 covers 23 almost as well as 10 covers 1, better than 15 covers 1; 15 covers 41 nearly or quite as well as 1 covers 10; 15 covers 14 better than 15 covers 1. In endeavoring to read from these minutes, I have made two mistakes in Sylvia Ann Howland's; endeavoring to remember them, rather, not read from them. 4 to 47 should read, covers better than 15, 1, saying nothing about 1 and 10. 15

to 41 should read, covers as well as 15 to 1, saying nothing about 1 and 10. That ends the covering business.

Int. 48. In your answers to the last two questions, when you say that certain numbers cover as well or better than 10, or 15, covers 1, what do you refer to by the numbers 10, 15, and 1?

Ans. I refer to the photographs, and the signatures marked F. W. P., 1, 10, and 15.

Int. 49. Taking all the signatures which you have testified you have examined, including all the various signatures of Sylvia Ann Howland, state where, in what signatures, you have found the
375 greatest uniformity, and especially with reference to the length of the signature, and to the words of the signature, and to the spacings between the words and letters.

4.30 p. m.—Adjourned to Saturday, May 4, 1867, 9.30 a. m.

SATURDAY, *May* 4, 1867—9.30 a. m.

(Foregoing question objected to as leading in form; so far as it refers to any signatures other than those of Sylvia Ann Howland, as immaterial.)

Ans. I cannot make an unqualified reply to that question, because I kept no record of such measurements, nor did I make such measurements except with my eye. But my impression was, when comparing the tracings of Sylvia Ann Howland's signature over the other signatures—over her other signatures on the bills of sale, power of attorney, and deed marked R. C. P.—that there was more similitude and uniformity in the length of the whole signature and the spaces between the words—the names—than in any other signatures I examined. I mean, a greater percentage to the whole number examined.

(Objected to as impression merely.)

Int. 50. Referring to the signature C. A. Walker, in regard to which you have testified, state whether or not, in the examination of the different signatures which you say you have made, you have found such signature C. A. Walker to repeat or cover itself more or less frequently than the other signatures.

(Objected to for form and substance, and as above.)

Ans. My impression is, that it was about the same as the best that I examined; but the question, I suppose, can be better answered by referring to the statement I made yesterday as to the number of his signatures that I examined, and the percentage that repeated themselves.

Int. 51. After the examination of the signatures, which you say you have made, now state what opinion or judgment, if any you have, as to the kinds of handwriting or signatures which would or would not be likely to cover or be repeated.

(Objected to as leading in form, immaterial in substance, and because the witness is not shown to be an expert in matters of handwriting, and because the witness is called upon to state an inference from particular facts, or supposed facts, and not an opinion

376 derived from general experience, and because the question assumes the existence of other facts of which no proof whatever has been offered in evidence.)

Ans. I have supposed for some years that a rigid, hard-written signature, cramped instead of flowing, would be more likely to cover, to repeat itself, than one written with a flowing hand from the shoulder and arm.

Int. 52. Assuming the signature Sylvia Ann Howland to F. W. P., 1, and to the papers marked R. C. P., and numbered from 1 to 51, inclusive, except 31, to be genuine, state whether or not you have arrived at any, and, if so, what opinion as to whether the signatures Sylvia Ann Howland to papers marked F. W. P., 10 and 15, are or are not genuine.

(Objected to as above, excepting as to its being leading in form, and as to the assumption of facts not in evidence.)

Ans. After a careful examination, and the examination of all the signatures referred to, I became satisfied that the signatures marked F. W. P., 10, and F. W. P., 15, were genuine.

(Answer objected to as incompetent and immaterial, and because said answer is an inference from incompetent and immaterial facts.)

Int. 53. State with what degree of confidence you entertain this opinion.

(Objected to for form, and for the reasons stated in the objection to the last question and answer.)

Ans. A great degree—a great degree of confidence, based on the resemblances, local and general, throughout the signature F. W. P., 10, and signature F. W. P., 1, and F. W. P., 15, and the signatures to bills of sale and power of attorney marked R. C. P.

Int. 54. Looking at the signature Sylvia Ann Howland to papers R. C. P., 1 to 51, except 31, which has been taken out of the case, state whether or not either, and, if so, which of the signatures Sylvia Ann Howland to the papers F. W. P., 1, 10, and 15, had the most of the characteristics found in said signature to R. C. P., 1 to 51.

(Objected to as assuming a fact not in proof, but the contrary of which is apparent upon the record, to wit, that the paper alluded to as R. C. P., 31, ever was put into the case, because it appears by the record that it was not put in evidence, and did not contain any signature of Sylvia Ann Howland; and because the witness is not shown to be an expert in matters of handwriting.)

Ans. The signature marked and numbered F. W. P., 10.

Int. 55. Looking at the termination of the d in Howland in
377 each of the signatures to F. W. P., 1, 10, and 15, and in the same signature to R. C. P., 1 to 51, inclusive, state in which, if in any, you find the greatest resemblance.

(Objected to as above.)

Ans. The greatest resemblance is in 10 and 15, F. W. P.

Int. 56. Resemblance to what? Please explain.

(Objected to as above.)

Ans. To the d in Howland, and I will add to the termination of the d in Howland.

Int. 57. In your answer to the fifty-fifth interrogatory, you answer, "The greatest resemblance is in 10 and 15, F. W. P." Resemblance to what, if any, signatures do you mean?

(Objected to for form, and as above.)

Ans. I mean that the termination of the d's in the signatures F. W. P., 10 and 15, bear more resemblance to the signatures R. C. P., 1 to 51, than the signature F. W. P., 1, bears to the signatures R. C. P., 1 to 51.

Int. 58. Taking the last down-stroke of the letter A in the word Ann in the signatures above referred to, please make the same examination in regard to it that you were asked to make in regard to the termination of the d in the fifty-fifth interrogatory, and state in which, if in any, you find the greatest resemblance.

(Objected to for form and as above, and respondents desire the examiner to note that before the question was put, and soon after it was commenced, the witness took into his hands and began to examine the papers marked F. W. P., Photograph A, F. W. P., Rider A.)

Ans. I find the greatest resemblance in 10 and 15, F. W. P., to the signatures in R. C. P., 1 to 51. I would like to add to that answer that the witness took the book and riders, book marked R. vs. M., by direction of counsel for plaintiff. The papers marked F. W. P., Photograph A, and F. W. P., Rider A, were all that I examined in answering the question. I had examined the papers before, but I had forgotten about the down-stroke.

Int. 59. Please look at Plates 15 and 16, in book marked R. vs. M., F. W. P., and state what they are, and by whom made or prepared, and with what degree of care, and what they show or illustrate, if anything.

Ans. Plates 15 and 16 contain enlarged photographs of the
378 signatures of Sylvia Ann Howland, and are numbered from 1 to 51, but not inclusive. There are twenty-three of them in all, on those two pages. They are all numbered with the numbers corresponding to the same signatures on the bills of sale and power of attorney, or deed—I don't know which—the papers marked 1 to 51, R. C. P., 31 being left out. They were prepared and mounted by me for photographing, and they were done with great care—photographed, I mean—so as to avoid distortion. The photographs of these signatures are exhibited here for the purpose of showing the peculiar habit of the writer to retouch her signatures in an uncalled-for, useless manner, and without any apparent object. Out of fifty of her signatures to the bills of sale and power of attorney, or deed, marked R. C. P., 1 to 51, I found twenty-one of them so retouched, in 44, I think, distinct instances. They may be found in signature No. 1—I am now referring to plates 15 and 16—letter o in Howland; in No. 6, in the i in Sylvia; No. 7, in the d in Howland; No. 8, the a in Sylvia, the A in Ann, the H and o in Howland; No. 13, the S in Sylvia, the A and n in Ann; No. 14, the y in Sylvia and a in Howland; in No. 15, the v in Sylvia, the H, the o, and a, in Howland; in No. 21, the H in Howland; in No. 23, the S in Sylvia, the o in Howland; in No. 24, the S in Sylvia and A in Ann; in No. 28,

the A in Ann; in No. 33, the S and i in Silvia, and the A in Ann; in No. 36, the i in Sylvia, the H, the o, and d in Howland; in 38, the S in Sylvia, the w and l in Howland; in 41, the i in Sylvia and n in Ann; in 42, the S in Sylvia; in 44, the l in Sylvia; in 46, the S in Sylvia, and n in Ann; in 47, the S in Sylvia; in 48, the S in Sylvia; in 51, the S and v in Sylvia, and H and l in Howland.

Int. 60. Please look at Plates 17 and 18 in said book, and state what they are, and by whom made or prepared, and with what degree or care, and what they show or illustrate, if anything.

Ans. Plate 17 contains a group of the signatures of Sylvia Ann Howland, photographed from the bills of sale marked R. C. P.; the photographs numbered to correspond with the numbers on said bills of sale. They were prepared and mounted by myself for photographing, and were photographed with great care to avoid distortion, but not to regard with great accuracy their size as compared with the originals. They are nearly the same size, however; they may be a little larger or a little smaller. Plate 17—the group on plate
379 17—exhibits the remarkable uniformity in the length of the whole signatures. The signatures are placed between two parallel lines for the purpose of aiding the eye to observe that uniformity. Plate 18 contains a group of the signatures of Sylvia Ann Howland, photographed from the bills of sale, power of attorney, and deed, on the papers marked R. C. P., 1 to 51. Said photographs are numbered to correspond with the numbers on said papers. The word Ann is placed between two parallel lines for the purpose of showing the uniformity of spacing between the names Sylvia and Ann, and the names Ann and Howland. The group on Plate 18 was prepared and mounted by myself for photographing, and photographed with great care to avoid distortion, but not with a nice regard as to the size of the signatures. They may be a little larger or smaller than the signatures; I don't remember which. They are of about the size of them.

Int. 61. Look at the rider opposite Plate 17, and state what it is.

Ans. It is a photograph from the same negative shown on Plate 17, made transparent with paraffine. No particular use for it that I know of, except to compare the length of the signatures more accurately than you can by the eye.

Int. 62. Please look at Plates 19, 20, 21, 22, 23, in said book, and state what they are, and by whom made or prepared, and with what, if any, degree of care, and what they show or illustrate, if anything.

Ans. They are enlarged photographs of the signatures of Sylvia Ann Howland, copied from and numbered to correspond with the R. C. P. papers, 1 to 51, 31 omitted. They were mounted and prepared for photographing in the manner stated in my last answer. [No. 50 and 51 on page 23—the signatures, I mean—are written in the writer's natural hand, and they correspond with, in their general form and expression, the signatures F. W. P., 1, 10, and 15. These signatures are exhibited here to show the restraint under which the writer wrote upon the ruled line on the bills of sale, power of attorney, and deed—the R. C. P. papers. In the signature in No.

49, page 23, the disposition of the writer to give the same upward direction, or curve, which the same name has in No. 50, is very apparent; but, after placing the letter y in the same relative position to the letter S in 49, that it bears to the S in 50, or nearly the same, it is plain to be seen that the writer's attention was attracted to the
380 ruled line below, or directed to the ruled line below, and that she then wrote the concluding portion of the name on a descending curve or line, so as to meet the ruled line. The same remarks are true of the name Sylvia in No. 48, and also true in regard to the word Howland in No. 48. Throughout the whole of them—the whole of the signatures written on the ruled lines—the same remarks are true, though in a lesser degree, perhaps; but a nicely-trained eye for observing forms will not fail to find the same results in all these signatures, and it is worthy of remark, that, in the effort of the writer to meet the ruled line, she often terminates the signature far below it. The signatures bear little resemblance, in their general form, with those she wrote with freedom—free from restraint, the restraint of the ruled line.]

(Bracketed part of answer objected to by respondents as irresponsive, incompetent, and for want of the qualification of the witness as to matters of handwriting before objected to.)

Int. 63. Look at the signature Sylvia Ann Howland to the papers now shown you by the examiner, marked F. W. P., and numbered respectively, 19, 20, and 21, and state what, if anything, you notice there in regard to a tendency to follow or depart from a straight base-line in writing.

(Objected to as leading.)

Ans. The tendency is—I find here—I have examined the papers—her signatures to the papers referred to, and find there is a marked tendency in the writer to avoid a straight line, by writing in a direction at an angle from and above it. At an angle or curve, I would add.

Int. 64. In answer to the forty-seventh question you have stated how some of the signatures to the bills of sale, R. C. P., 1 to 51, compare, in being superposed, with signatures F. W. P., 10 and 15, superposed on signature to F. W. P., 1; state whether such resemblance or exactness in cover, would or would not be more marked in photographs of small or natural size than in the enlarged photographs.

Ans. They would be very much less marked in photographs of the small or natural size. The more a signature is magnified, the more apparent all variations, however slight in the small, would appear. [I very often placed small signatures before the lens, and enlarged them with the expectation that the enlarged photographs from them would make good covers. I was often mistaken. I couldn't determine with certainty how the small signatures would appear when enlarged, except by actual trial. Some of the small
381 ones turned out better than I anticipated, but generally much worse.]

(Bracketed portion of answer objected to, by respondents, as irresp nsive.)

Int. 65. State whether or not you have examined with any, and, if so, what degree of care, the large books marked R. C. P., Book 1, Volume 1 and Volume 2, and the small books of photographs marked R. C. P., and consecutively numbered from 2 to 30, in the office of the clerk of the circuit court, filed by the respondents, to see whether or not there was any photograph in small or natural size of the signature Sylvia Ann Howland to bill of sale marked R. C. P., 4.

Ans. I examined all the books referred to in the question, with care. In the books numbered from 2 to 30, there was no photograph of the signature to No. 4 of the bills of sale. I found it but once in all the books—in any of the books—and that once on Plate 17, Book 1, Volume 1, [and there the signature was very much enlarged.]

(Respondents object to bracketed portion of answer as irresponsive.)

Int. 66. Referring to the last question and answer, please examine carefully the large volumes there referred to, especially Plate 18, Book 1, Volume 1, and Plates 16 and 17, Volume 2, and see if they affect your last answer.

(Objected to as leading and as in the nature of cross-examination.)

Ans. I have examined those books and plates, and the examination does effect my answer very materially. I found the signature three times in the large books, enlarged, but I presume all from the same negative. I suppose the negatives were all the same. By "enlarged," I mean enlarged photographs of the signature.

Int. 67. Please look at the plate numbered 14 in said book, (R. C. P., Book 1, Volume 1,) and state what number of signatures you find there, and whether or not you find any photograph of said signature to R. C. P., 4.

Ans. I find photographs of fifty signatures here, signatures numbered to 50, but no signature to No. 4, and no signature numbered 4, here—signatures numbered here to 51.

Int. 68. Whose signatures do those fifty-one signatures purport to be?

Ans. The signatures of Sylvia Ann Howland.

Int. 69. Placing the signature Sylvia Ann Howland on the
382 paper marked F. W. P., 10, over the same signature on F. W. P., 1, and having regard to the relative positions of the two signatures on the respective sheets on which they are written, state whether or not you have made any, and, if so, what similar experiments with any other and what signatures that you have before testified to, and with what result.

(Objected to as leading; so far as it refers to any signatures other than those of Sylvia Ann Howland, as immaterial.)

Ans. I have placed these signatures one upon another here and now, that is, 10 upon 1, and 15 upon 1. I have done it before, but I wanted to do it again. And I examined the signatures of Geo. C. Wilde, 4 over 3, and found the edges of the paper covered as well as 10 on 1 of F. W. P. I examined the paper upon which the signature of Joseph B. Spear is written, 45 over 10, and found it to cover

as well as 10 over 1. John Quincy Adams, 51 over 58—the printed matter covered as well as 10 over 1—as well as the edges of the paper covered 10 over 1. I don't know that I mean all the printed matter—a portion of it. In the check of Stephen Fairbanks, 2,365 over 1,423, the printed matter, or a portion of it, covered as well as the edges of the paper matched in 10 over 1. The C. A. Walker signature, No. 679 over 669, and the reverse; the printed matter—some of the printed matter, matches as well as the edges of the paper in 10 over 1. In Saml. Swett's signature, 41 over 12, and the reverse, a portion of the printed matter matches as well as the edges of the paper in 10 over 1. In F. W. Palfrey's signature, No. 246 over 270, a portion of the printed matter matches as well as the edges of the paper in 10 over 1.

Int. 70. In your answer to the last question, when you state that you found the signature Joseph B. Spear, 45 over 10, to cover as well as 10 over 1, what did you mean?

Ans. I meant that when signature 45 was placed over 10, that the edges of the paper matched as well as the edges of the paper matched or match with 10 over 1.

Int. 71. Please look at the tracings marked F. W. P., 1, X; F. W. P., 10, X; F. W. P., X; F. W. P., R. C. P., 9; F. W. P., R. C. P., 15; F. W. P., R. C. P. 18; F. W. P., R. C. P., 24; F. W. P., R. C. P., 32; F. W. P., R. C. P., 36; and state by whom they were made and from what they were traced.

383 Ans. They were all traced under my direction, and all verified by me. I believe the F. W. P., 15, 10, and 1, I traced myself. The marginal figures, which are very numerous in the tracings, were all my own, and refer to signatures of the same numbers as approximating to the numbers on these tracings—on the tracings. They were traced from the papers marked F. W. P., 1, 10, and 15, and from the papers marked R. C. P., and the numbers on the tracings correspond with the numbers on the bills of sale or other papers from which they were traced.

Int. 72. State how nearly said tracings are exact copies of the signatures from which they were traced.

Ans. As two things are not exactly alike, I suppose there would be some difference in these, if there were means of measuring them, but I could find no difference with my ordinary magnifying glass, and I consider them very close copies, very accurate copies, or tracings, of the originals.

Int. 73. State fully, if you have not already, what personal experience, if any, you have had in making accurate or nice tracings.

(Objected to for form and substance.)

Ans. Much of the work that I have done in engraving has required nice tracings, very nice; such as the forms of crystals, in engraving them, and in engraving type for alphabets of type for founders to multiply type from, and in tracing signatures or writings, when facsimiles were to be engraved; in geometrical figures, nice tracings were required before engraving.

Int. 74. State whether or not you have made any, and, if so, what

examination of the signatures Sylvia Ann Howland to papers F. W. P., 10 and 15, with reference to the question whether they were made by tracing from said signature to F. W. P., 1, and in any way by tracing, and with what result.

(Objected to as leading and as re-examination upon a matter upon which the witness has already been examined and expressed an opinion.)

Ans. I have made such examination with a great deal of care, but I could find no mark or expression about the signatures to 10 and 15 to indicate to my mind that either of them had been traced from F. W. P., 1, or that they had been traced at all. They seemed to me like genuine signatures, and F. W. P., 10, seemed to me more like her—like Sylvia Ann Howland's—writing, more characteris-
384 tic of it—I mean her signature, than 1 or 15, for the reason that it bears the same marks of retouchings shown on pages 15 and 16 in Book R. vs. M., F. W. P.

2 p. m.—Adjourned to Monday, May 6, 1867, 10 a. m.

MONDAY, *May* 6, 1867—10 a. m.

Int. 75. State whether or not you have made any, and, if so, what examination of the contents of the books marked R. C. P., Book 1, Volume 1, and Book 1, Volume 2, with reference to the accuracy of the work, and with what result.

Ans. I have examined those books, and I find that the photographs on Plate 1, Figures 2 and 4, in Volume 1, the signatures of Sylvia Ann Howland are the size of the originals—not the same size as the originals. That the photographs on Plate 10, same volume, of Sylvia Ann Howland's signatures, Nos. 1, 10, and 15, are neither of them the same size as the originals. The photographs on Plate 14, same volume, the signatures, I mean, are not the same size as the originals from which they were copied, or from which they purport to be copied. There are five groups on Plate 14. I measured five signatures in each group. I measured two names at the top, and two at the bottom, and one near the centre of each group, presuming that would indicate the character of the whole. In the three upper groups on the plate I found the photographs—I allude now to the riders only—larger, longer than the originals. In the two lower groups I found them shorter than the originals. In the second envelope in Book 1, Volume 2, I found six fragments, pieces, of engineer's scales—engine divided in sixtieths and thirtieths of an inch, and printed on stout paper. In the third envelope I found photographs marked R. C. P., photograph, and numbered, respectively, 8, 9, 10, 11, 12. I measured said photographs—the signatures, I mean—and found they were not the same size as the originals. The photographs of the signatures are all smaller than the originals. If the photographs shown on Plate 3½, same volume, are the same size as the originals, F. W. P., 1, 10, and 15, then upon superposing 10 upon 1 there is a difference in the width of the two papers, varying from the sixtieth of an inch down to nought, or beyond the limit of measurement.

385 The photographs of the small signatures of Sylvia Ann Howland, on Plate 4½, do not exhibit those signatures of the same size as the originals F. W. P., No. 1, and F. W. P., No. 15. They are smaller than the originals. The photographs on Plate 5½ of the signatures of Sylvia Ann Howland, and marked, respectively, R. C. Pitman, Ext.—R. C. Pitman—R. C. Pitman—(with the words Plate 5½ written upside down under each signature as above)—are not the same size as the originals, F. W. P., 1, 10, and 15. The photographs of the engineer's engine-divided scales, photographed in a group, on Plate 13, said scales being marked R. C. P., and numbered, respectively, 1, 2, 3, 4, 5, 6, do not correspond with each other. The photographs I am speaking of, on placing the rider over the opaque photograph, so that the scale R. C. P., 1, would cover the scale R. C. P., 4, I found they did not coincide with each other. On placing the rider of scale 2 over the photograph of scale 3, I found they did not coincide with each other. On bringing the lower part of scale 6 over the central part of scale 4, I found the two did not coincide in measurement. On bringing the top part of scale 6 over the central part of scale 3, I found they did not coincide. The same is true of the top and bottom of scale 5, when placed over scale 3 and scales 4. I placed the rider or transparency of this group of scales only over the opaque photograph not pasted to the card-board. The opaque photograph shown on Plate 14, same volume, does not coincide with the rider or transparent photograph which accompanies it. The same remark is true of the opaque rider and photograph on Plates 15 and 16. Plate 17, though showing less difference in the size between the rider and photograph—I ought to have said opaque photograph—just alluded to, does not coincide with its accompanying rider. In Plate 18, the opaque photograph does not coincide with its accompanying rider. In no instance did I find a rider in R. C. P., Book 1, Volume 1, or R. C. P., Book 1, Volume 2, that corresponded with its accompanying opaque photograph, and in no instance did I find a rider which corresponded in size with the original signatures of Sylvia Ann Howland, and numbered from 1 to 51, 31 omitted, nor with the signatures of Sylvia Ann Howland, the original signatures, marked F. W. P., and numbered 1, 10, and 15.

386 Int. 76. Look at the commencement of your answer to the last interrogatory, and see whether your meaning is there expressed. It may be clear to you, though it is not to me, but if clear to you, that is sufficient.

(Objected to as irregular.)

Ans. Of course not; that is not my meaning; not what I intended to say. The words contradict themselves. It should read "the signatures of Sylvia Ann Howland are not the size of the originals," etc.

Int. 77. State whether or not any, and, if so, what lens is known among photographers to be the best lens for producing accurate or exact photographic copies.

(Objected to as immaterial, as examination upon a subject upon which the witness has already been examined, and because it calls for testimony in itself incompetent.

Ans. The globe lens—much the best.

Int. 78. What lens was used in making the photographs in the book marked R. vs. M., F. W. P.?

(Objected to as examination upon a subject in which the witness has already been examined, and as immaterial.)

Ans. The globe lens.

Int. 79. State whether or not you were present at any time when any lens and apparatus was shown to Mr. Mathiot, of the United States Coast Survey, as the lens and apparatus used in photographing said book.

(Objected to as leading and immaterial.)

Ans. I was present.

Int. 80. What lens and apparatus were then shown him?

(Objected to as above.)

Ans. The globe lens, with its camera, and the mode of operating the whole instrument in all its parts.

Int. 81. State whether or not you have any, and, if any, what knowledge of the Voigtlander lens, and of its qualities in regard to producing or not producing accurate copies.

(Objected to for form and substance.)

Ans. I am familiar with the working of the Voigtlander lens. It is used chiefly for making portraits, but rarely for copying maps or prints or geometrical figures. It works quick, quicker than the globe, and answers well for portraits, although the figure of its field is not very accurate; not so accurate as the globe.

Int. 82. State whether or not you have any, and, if so, what knowledge or experience as to how photographic prints or other paper can be affixed to a firm substance, as pasteboard, without stretching or distorting the paper.

387 Ans. I have had some experience in it. I pasted several photographs to card-board many months since, and after testing it several times from week to week, I discovered little or no distortion; less than with any other means of securing them. When the papers are free from water or moisture—I mean both the card-board and the photograph—before the rubber is put on—the rubber paste—I cannot think there will be any distortion—any appreciable or measurable—perceptible.

Int. 83. State how all the photographic prints or plates, from 1 to 24, inclusive, marked F. W. P., and before referred to, were affixed to the pasteboard, and with what, if any, degree of care.

Ans. They were affixed with paste made of rubber and hydrocarbon oils, or benzole, and they were done with very great care, if my directions were fully carried out. I made one or two myself with the same kind of paper, and the same material, which I am sure have never moved perceptibly.

Int. 84. To what do the numbers set against the signatures and writing, in book marked R. vs. M., F. W. P., refer?

Ans. They refer to similar numbers on the papers from which the photographs were made.

Int. 85. By whom, if you know, were those numbers placed upon those papers?

Ans. The numbers on the signatures of J. Q. Adams, Geo. C. Wilde, and Joseph B. Spear, were placed there by myself. All the others were written or printed on the papers when I received them.

Int. 86. What reference, if any, have they to the number of each signature respectively received by you?

Ans. Those on Adams's and Wilde's and Speare's express the exact number that I examined of each of those signatures. I mean, of course, the papers themselves and not the photographs, because only a small portion of those were photographed; only a small portion of the whole number. Some of the checks photographed bear very high numbers; but those numbers have no reference to the number of checks used—examined.

Int. 87. Taking the signature Sylvia Ann Howland, F. W. P., 1, and placing it over the signatures to F. W. P., 10 and 15, and having regard to the lines written behind each of these signatures
388 respectively, state through which of the papers marked F. W. P., 10 and 15, if either, a tracing could be more readily made, and why?

Ans. It could be more easily made by placing the signature to F. W. P., 15, over 1, on account of the clearness of the paper, and the writing which is behind the signature, on the opposite side of the paper.

Int. 88. State whether or not, in printing from negatives in photography, any, and, if so, what degree of care is requisite to duplicate or repeat or print exact copies from the same negative.

(Objected to as leading, and because the witness has not shown himself to be an expert in that department, and is immaterial.)

Ans. Great care is necessary. I don't suppose any exact copies can be made. The term "exact" would be differently construed by different individuals. I used great care in printing the photographs in the book marked R. vs. M., F. W. P., but I don't feel disposed to advertise the method I employed to do it; at least not at present.

Int. 89. Please state what the five books now marked by the examiner F. W. P., Book 2, F. W. P., Book 3, F. W. P., Book 4, F. W. P., Book 5, and F. W. P., Book 6, are, and what they contain.

Ans. I can't say what these books contain without examining them; before my examination closes I will examine them and enable myself to answer the question.

Cross-examination:

Cross-int. 1. Please look at the manuscript from which the questions have been read to you the past two days, and state whether you have ever seen it before?

Ans. Where shall I find the manuscript?

Cross-int 2. In the possession of the counsel examining you. Please look at it and answer the question.

Ans. I don't see the manuscript, and therefore I can't look at it.

Cross-int. 3. Please ask the counsel to show you that manuscript, for the purpose of enabling you to answer the question put to you.

(The question being thus spoken by counsel for respondents, and before it was recorded, counsel for plaintiff says, "You may do as you like about complying with that request." Counsel for respondents desires that this interlocutory matter be noted.)

Ans. I respectfully ask the counsel to furnish me with the
389 manuscript in question, to enable me to answer the question propounded.

(Counsel replies, or begins to, when counsel for respondents asks a ruling on the subject that there is no occasion for the interposition of counsel, and that no statement of counsel is to be entered on the record, except that he declines or accedes to the request. The examiner rules that, as the witness has made the request of counsel for plaintiff in accordance with the request of counsel for respondents, the answer of plaintiff's counsel thereto is to be recorded as given. Counsel for plaintiff replies that the paper in question contains minutes in the case besides the questions put to the witness, and that he therefore declines to furnish the manuscript to him. Counsel for respondents desire the manuscript be submitted to the examiner, that he may examine it and determine whether there is anything in the manuscript from which the questions have been read to the witness which would render it improper that the witness should see the manuscript for the purpose of answering the simple question put to him in the first cross-interrogatory, to wit, whether he had ever seen the manuscript before. Counsel for plaintiff replies, that for the reason before stated, the correctness of which he reserves to himself the right to determine, the manuscript will not be submitted to the examiner. Counsel for respondents respectfully suggest that it is not for the counsel for the complainant to determine whether the manuscript should be so examined or not, and thereupon requests the examiner to direct the counsel for plaintiff to submit the paper to his, the examiner's, inspection, that he may determine whether any sufficient reason exists for withholding the paper from the inspection of the witness, so far as to enable him intelligently and truly to answer the question proposed to him in the first cross-interrogatory.)

Recess—1 to 2 p. m.

(The magistrate declines to give the direction requested by counsel for respondents.)

Cross-int. 4. Did you see any notes on this manuscript of questions except the questions themselves?

Ans. No; I did not. Is it expected that I am to give a cate-
390 gorical answer to these questions?

(Counsel for respondent says, Yes. Counsel for plaintiff directs the witness to give such answers as in his judgment are proper. Counsel for respondents says the witness is to receive no instructions from counsel for plaintiff.)

Cross-int. 5. Do you recollect saying to the counsel examining you, during the progress of the examination, once or twice, "Aren't you

going to put this or that question about this or that," or words to that effect?

Ans. I do.

Cross-int. 6. When did Mr. Thaxter leave off the examination, that is, conducting the examination?

Ans. I think on Saturday; it might have been Friday. I don't remember, to-day being Monday.

Cross-int. 7. Who mounted the photographs contained in the volume R. vs. M., F. W. P.?

Ans. Do you mean who mounted the originals for photographing?

Cross-int. 8. No; I mean who mounted the photographs in that book?

Ans. They were mounted by two or three persons in the employment of Mr. Black, and were all mounted by my direction.

Cross-int. 9. Did you see the work done, and personally supervise it as it was done?

Ans. I was in Mr. Black's place of business two and three times a day, and went there for the purpose of seeing the work done, to see if they were following my directions, and so far supervised it. The amount of work was very considerable, there being probably five or six thousand photographs to be mounted, and I took such notice of the whole proceedings as to be measurably satisfied that it was being done thoroughly, done well.

Cross-int. 10. Who made the paste, or whatever name you may give to the substance, by which the photographs were attached to the pasteboard?

Ans. I don't know who actually made it; but I bought it of a Mr. Hale, in School street, dealer in rubber goods.

Cross-int. 11. Did you analyze it ever?

Ans. I never did.

Cross-int. 12. When you speak of its being compounded of India-rubber and hydrocarbon oils, or benzole, you speak of matter not within your personal knowledge, but of what is reputed to be, do you?

391 Ans. I made the first specimen of a solution of rubber and hydrocarbon oils that I ever knew to be used for a similar purpose, myself. I made but a small quantity to test its qualities, its adhesive qualities, and finding it answered the purpose well, I purchased the large quantity necessary for the work referred to of Mr. Hale. Its smell and general physical properties indicated it to be made of the same materials that I had used myself. I reduced its consistency with benzole occasionally, and I judged from the manner in which the paste I got from Mr. Hale mixed with the benzole, that the solvent for it used by him was the same kind of oil, essentially the same.

Cross-int. 13. What is there remarkable in this compound, if anything, besides its sticking or adhesive properties?

Ans. It differs from all other adhesive materials in this, that it does not expand or contract the paper to which it is applied in any appreciable degree that I have ever discovered.

Cross-int. 14. You mean it is non-elastic?

Ans. No; it is quite as elastic after having been dissolved and dried as before being submitted to the action of the solvent, or very nearly as elastic.

Cross-int. 15. The only action of the oil is as a solvent, is it not?

Ans. That is its principal action; but the rubber, after having been dissolved, does not seem to return on drying, or parting with all the solvent, quite to its natural condition, though very nearly.

Cross-int. 16. That's because it doesn't quite part with its solvent, is it not?

Ans. I think not; almost all resins, (rubber is a resin,) when submitted to the action and dissolved in chloroform, benzole, and many other substances of that nature, can never be restored to their primitive condition. It is so with wax and asphaltum and several other similar substances.

Cross-int. 17. That is, there is no chemical process by which separation can be effected between the dissolved substance and the solvent?

Ans. The separation can be apparently very thoroughly affected, but still the article acted on by the solvent never seems to come back to its original state. Gums do so, and some gum resins, but no resins that I know of.

Cross-int. 18. Why not?

392 Ans. I am quite unable to say, and I don't think any living man can tell why.

Cross-int. 19. Did you ever try the experiment, yourself, of driving out the acid from the resin?

Ans. Yes; a great many times.

Cross-int. 20. State the process pursued.

Ans. By the application of heat, and long drying in the air.

Cross-int. 21. Wasn't the trouble with the imperfection of the experiment.

Ans. I think not. I am as certain as I can be that it was not.

Cross-int. 22. That is, you mean to state, as a matter of science, that no amount of heat would expel the acid from the resin, in your judgment?

Ans. I didn't say, or mean to say, any such thing, and no such inference could be drawn from my answer—justly drawn. All I said was, or meant to say, that the articles so acted on did not return to their natural condition. If heat enough were applied, the resins would be decomposed, and then, I suppose, all the solvent used would be driven off.

Cross-int. 23. But not till then?

Ans. I didn't say so and I don't say so now. It is very probable the solvents would all be driven off before the temperature reached a point so high as to produce decomposition.

Cross-int. 24. What is there in this paste and the application of it which prevents the action of the atmosphere upon the paper, if anything?

Ans. I only know, as all the world knows, that rubber resists the

action of almost all liquids, alkalies and acids, and water; water, especially. How nature forms it, I have no notion. All we know, chemically, about it is, that it is a hydrocarbon resin. When it is applied to paper, the solvent carries the rubber into the meshes of the paper, rendering the paper nearly water-proof.

Cross-int. 25. Then, if I understand you, the paper and the pasteboard under it are so saturated or filled up with the paste as to exclude the moisture of the atmosphere?

Ans. To a greater extent than any other paste that I know of, used for a similar purpose.

393 Cross-int. 26. What paper did you select for these books, and of what material is it manufactured? I include the pasteboard in the question.

Ans. The paper is known as Saxe paper. It is supposed to be made mostly of linen; but I dont know what it is made of. The pasteboard is the ordinary card-board from the markets here. I suppose there's more cotton than linen in it, because it's cheaper. I don't know what it's made of, certainly.

Cross-int. 27. Which paper contracts and expands the more with the dryness and moisture of the atmosphere? That is, linen or cotton?

Ans. I don't know. I never made the experiment with them, but I presume that linen must, from its nature, contract and expand more. Linen takes up moisture and parts with it quicker, I believe, than any other known vegetable material.

Cross-int. 28. How long were they engaged in mounting these photographs in the books?

Ans. I think the order came to me to print and bind the books about the last week in February, or a little before that, perhaps; and they were completed, the printing of them, and the mounting, and the riders, within the week past.

Cross-int. 29. My question was confined to the time occupied in mounting.

Ans. I can't answer that without going to my room and getting my bills. I should think, perhaps, the 10th or 12th of March they commenced mounting, and finished within a week. I think on Wednesday last the mounting was all completed.

Cross-int. 30. Working continuously?

Ans. No.

Cross-int. 31. How, then?

Ans. I think there was perhaps ten days or a fortnight that the mounting ceased for the want of some deficiencies that the printers neglected to furnish.

Cross-int. 32. Otherwise continuously?

Ans. I think so.

Cross-int. 33. Who did the work of photographing after the exhibits were mounted?

394 Ans. Mr. James W. Black, of Boston, whose place of business is in Washington street. He made the negatives.

Cross-int. 34. Does the whole work of photographing consist in

making the negative? Or, whether it does or not, my question refers to the whole work, from the time of mounting till the photograph picture incomplete.

Ans. In one sense, photographing consists simply in submitting some sensitive salt to the action of light, but, as I understand this question, I will answer by saying that I mounted all the papers containing signatures myself; that I made and gave to Mr. Black the precise measurements that should be represented on the ground glass of the camera by the signatures; also, the measurements for the enlarged photographs. He focussed the instrument or the image reflected on the ground glass, placed the collodionized plate in the camera, lighted it, and developed it, and then varnished it; that is, he or his employees, some one of them, did the varnishing. As soon as a proof was obtained or printed, it was handed to me, and I took it to my room for verification. If the dimensions proved to correspond with those I had given him, the negative was placed in the hands of the printer, or in readiness for the printer. The printer made the prints, by Mr. Black's direction, in the manner that I requested they should be made, [and I presume they have all been so made.] I tested a few, and found them correct. It would have taken many, many months of time to have tested the whole—to have tested the prints from each negative, say, please—and therefore I did not do it. (Answer having been read at the request of counsel for respondents, the witness says:) I omitted something from my answer. It was this, that after mounting the signatures, I examined them in their position on the camera, in order to see that each group of names, autographs, stood as nearly as I could possibly make them, perpendicular to a line parallel with the axis of the lens. I mean this to apply to all those signatures which were to be photographed of the size of the originals, particularly.

(Bracketed portion of answer objected to by respondents as irresponsive.)

4 p. m.—Adjourned to Tuesday, May 7, 1867, 9.30 a. m.

395 TUESDAY, *May* 7, 1867—9.30 a. m.

Cross-int. 35. The larger photographs in the book R. vs. M., I understand are not made on any regular scale-proportion as compared with the originals?

Ans. All the large ones on the same negative are, of course, on the same scale. (The attention of the witness being called to the alteration in the question of "scale" to "scale-proportion," he says:) Oh, no; they are not. The only attempt made in regard to the enlarged photographs was, to make them full as large, or larger, than the enlarged photographs in the books marked R. C. P., in proportion to the originals.

Cross-int. 36. If I understood you rightly, they were intended to bear the same proportion to their originals that the photographs in the R. C. P. books bear to their originals?

Ans. No; if you understood me so, you misunderstood me. I said,

that the large photographs were made so as to be always as large in proportion to the originals, or larger, than those in the books R. C. P. [The larger a photograph is made from any given size, the more prominently all slight differences will appear.]

(Respondents object to bracketed portion of answer as irresponsive.)

Cross-int. 37. Then the only object in your enlarged photographs was to have them as large as those in the R. C. P. books, was it?

Ans. One object was to have them as large, or larger, in proportion to the originals. Another object was to make them more free from distortion.

Cross-int. 38. Did you make any photographs of F. W. P., Nos. 1, 10, and 15?

Ans. No.

Cross-int. 39. I observe in Book R. vs. M., F. W. P., photographs of the bills of sale, R. C. P., 1 to 51, that you say were intended to be of the original size. Did you make any riders to those photographs, or are there any such in the book?

Ans. Yes; there were such made, and there are such in the book, or they were in it the last time I saw it. (Witness asks to hear the question read again, and then says:) When the question was asked me, I thought it meant the signatures to the checks and other papers which I photographed natural size. I don't remember about
396 the riders to the signatures of Sylvia Ann Howland. My impression is that the signatures from 1 to 51, R. C. P., were not photographed near the natural size. I think there were only two groups photographed from those signatures. (Counsel for respondents here says: If you prefer to wait for the book, Mr. Crosman, I will delay this for awhile.) One, I think, of some twenty names, and the other more than that—a rider was made for only one of those groups. (The book R. vs. M., F. W. P., is now produced.) Now that I have examined the book, I find that my remarks from memory—my last remarks—were correct, or nearly correct. I made a mistake about the number.

Cross-int. 40. Then in this book there are no photographs of the bills of sale of the natural size?

Ans. None exactly of the natural size. [Of these two groups on Plates 17 and 18, one was made to show the uniformity in the length of the signatures; the other the uniformity in the spacings between the names Sylvia and Ann, and Ann and Howland.]

(Respondents object to bracketed portion of answer as wholly irresponsive, and as fully testified in his examination in chief, and, therefore, not necessary as an explanation of his answer to the question put.)

Cross-int. 41. If there are any photographs of bills of sale 4 and 42, of the natural size, and any rider thereto, of the natural size in the book, please point them out.

Ans. There are none, as I stated in my direct examination, of the natural size, [but a group of 4, 42, 47, 19, so numbered, very near the

natural size—as near or nearer the natural size than the signatures purporting to be the natural size in the books R. C. P.]

(Respondents object to the bracketed portion of answer as irresponsive and argumentative.)

Cross-int. 42. Are there any riders to the numbers 4 and 42 of the natural size?

Ans. Yes; not the natural size, because I didn't say there were any of the natural size, but near the natural size.

Cross-int. 43. Is there any rider to Plate 18?

Ans. No.

Cross-int. 44. Are there any riders to the photographs on Plate 18?

Ans. No.

Cross-int. 45. Are 4 and 42 contained in Plate 17?

Ans. No.

397 Cross-int. 46. On Plate 2 of Book R. vs. M., was the group numbered 3 photographed by Mr. Black and yourself?

Ans. Yes; in the same manner as all the others.

Cross-int. 47. On Plate 18 are the angles, formed by the perpendicular black lines with the white lines, right angles?

Ans. No; no attempt to make them so.

Cross-int. 48. Are they equal angles?

Ans. No; I folded and mounted these papers, these signatures, generally by the old folds, which I suppose were in them from having been previously photographed, and mounted them without regard to anything but the spacings between Sylvia and Ann, and Ann and Howland.

Cross-int. 49. State whether on Plate 17 the perpendicular black lines and the horizontal ones make right angles.

Ans. I think not; I see but one or two that seem to be near right angles. There was no attempt to make right angles, but only to show the uniformity in length of signature.

Cross-int. 50. Are the angles made by the perpendicular and horizontal lines on Plate 17 equal angles?

Ans. Not equal, if I understand the question.

Cross-int. 51. Was it of any importance that they should be right angles?

Ans. Not essentially, that I conceive of.

Cross-int. 52. Do you state that with confidence?

Ans. Yes; if you mean the angles of the papers with the two long parallel lines.

Cross-int. 53. It wasn't necessary that the horizontal lines should be parallel?

Ans. Not for the purpose for which this exhibit was made; there was no exactitude attempted in that respect, but the group was made merely to show generally the remarkable uniformity in the writing in the length of the signature.

Cross-int. 54. And to measure with accuracy the respective lengths of the signatures, it was not important that they should be either of the natural size or placed parallel to each other. Is that what you mean to say?

Ans. No; I suppose they could be measured if they were not
398 together in a group, with accuracy, just as well. The measurement here is intended to be that of a general nature—the impression of the whole group on the eye, and nothing more.

Cross-int. 55. Exactly; and you mean to say that that impression is not affected by the angle made by the perpendicular and horizontal lines, or the parallelism of want, or parallelism of the lines?

Ans. No; I don't mean to say any such thing—did not say any such thing.

Cross-int. 56. And are those so arranged as to make the most accurate impression upon the mind?

Ans. I can't say; they might make a more accurate impression on some minds if arranged differently, and on some minds not. I can't tell what impression they would make on other people's minds than my own. I never gave any particular thought to the arrangement of them—the precise arrangement of them. [I see one or two here which, if placed at a different angle to the long parallel lines, would be considerably improved, and make them to correspond more nearly with others in the group.]

(Bracketed portion of answer objected to by respondents as irresponsive.)

Cross-int. 57. Please give to the examiner the numbers of the bills of sale that are not on Plate 17?

Ans. All are not here that are not numbered here. The numbers of bills of sale not on Plate 17 are, 1, 2, 3, 4, 5, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 45, 46, 47, 48, 49.

Cross-int. 58. State how many of the numbers, not on Plate 17, appear on Plate 18.

Ans, Eleven, if I have counted them right, and I believe I have.

Cross-int 59. Photograph A, of which you testified that you mounted it, with what paste was it mounted? I speak of F. W. P., Photograph A.

Ans. I have no doubbt it is mounted with rubber paste. I ordered it to be so mounted, and from what I see on it, I have no doubt that it is.

Cross-int. 60. What was used to give transparency to the rider, F. W. P., Rider A?

Ans. Paraffine.

399 Cross-int. 61. Did you go to Taunton to make any tracings of signatures?

Ans. Yes.

Cross-int. 62. To the probate office?

Ans. Yes.

Cross-int. 63. I understand you, that you have examined with care these books marked R. C. P., Book 1, Volume 1, and R. C. P., Book 1, Volume 2.

Ans. I did so say. but I should have qualified my answer by saying, that I examined with care, with great care, everything that I considered essential in the case, but I did not examine with care any of

the large photographs, except so far as related to the matching of their riders by superposing them.

Cross-int. 64. Did you form, in your examination—observe the question, if you please—and not from outside information, any opinion as to what lens was used in making these two volumes, R. C. P.?

Ans. No; I think not.

Cross-int. 65. Could you form an intelligent opinion, from inspection of the work?

Ans. No; not what particular lens, [but I should know that it was a lens that disorted the image—plenty of lenses will do that.]

(Objected to by respondents; i. e., part in brackets, as irresponsive.)

Cross-int. 66. Did you observe any difference in the ways in which the photographs in those volumes are prepared?

Ans. Does the question mean in regard to mounting the signatures to be photographed, and making negatives?

Cross-int. 67. It means the way in which the pictures were made.

Ans. The question applies to two subjects; one to the way they were made in the camera; one to the way they were made in the books.

Cross-int. 68. Please answer the question.

Ans. If it means the way they were made in the camera, I found some difference—a considerable difference—in the photographs on Plate 14 of Book 1, Volume 1; the three upper groups on said plate being larger—the signatures on them, I mean—than the two lower groups, which are smaller. I speak now from memory. My
400 direct testimony will show which are larger. If the question refers to the prints in the books, I did not observe any difference in their preparation.

Cross-int. 69. To a question which seeks to ascertain your opinion or judgment, if you have any, as to the method, or methods, by which the pictures contained in these volumes—commonly called photographs—were produced, that, after a careful examination of the volumes, is the best and most intelligent answer you can give, is it?

(Witness, after hearing the question read, says to the examiner, Will you read me the question? The examiner does so.)

Ans. I didn't know that my opinion or judgment of the general character of the photography was asked. I thought the question was, if I saw any difference in the volumes, or in the photographs in the volumes, as to the manner in which they were made?

Cross-int. 70. Did you make any photographs of the bodies or handwriting of the documents F. W. P., 1, 10, and 15?

Ans. I think I did, one or two. I don't remember whether I did the whole three or not.

Cross-int. 71. Did you, and which?

Ans. I think 10 and 1. I am not clear about 15.

Cross-int. 72. Confident about 10 and 1?

Ans. Pretty confident, but not absolutely certain. I know I did No. 10, at any rate.

Cross-int. 73. Would that manuscript of notes which you had to aid you in your examination, and to make your answers by reference to the notes in the order in which the questions were put to you, enable you to answer the question last put by reference thereto?

(Objected to as assuming that he had any manuscript of notes, which is not proved.)

Ans. No; it would not.

Cross-int. 74. In the book R. vs. M., then, there are no photographs of the bodies or handwriting of the exhibits F. W. P., 1, 10, and 15, of the signatures of those exhibits F. W. P., 1, 10, and 15, of the natural size, or of any enlarged size; no photographs of the bills of sale, 1 to 51, of the natural size, except group 3 on Plate 2, which contains four of those signatures to bills of sale; no riders to the enlarged photographs of the signatures to bills of sale, or the deed or power of attorney, occupying Plates 19, 20, 21, 22, 23?

Ans. There are none except the photograph marked F. W. P.,
401 Photograph A, and rider marked F. W. P., Rider A, enlarged size, and F. W. P., 15, F. W. P., 10, F. W. P., 1, with rider, natural size.

Cross-int. 75. Observe that the question applies to the book, and state whether photograph and rider marked F. W. P., Photograph A, and F. W. P., Rider A, and the photograph with rider of F. W. P., 1, 10, and 15, of the natural size, were prepared by you, and form part of the book.

Ans. The photographs referred to were mounted, and the riders to them made transparent by me, and were placed in an envelope in a pocket on the inside of the cover of the book R. vs. M. (These two papers, photograph and rider of Howland signatures to F. W. P., 1, 10, and 15, of natural size, here referred to, are now marked for identification, F. W. P., Photograph B, No. 2, and F. W. P., Rider B.) These photographs are intended to constitute a part of the book.

Cross-int. 76. When was Plate 24 added to that volume?

Ans. I can't tell the date very nearly, but I think some four weeks ago since it was photographed. I think it was fastened in the volume about last Thursday—or Wednesday, possibly.

Cross-int. 77. What two signatures, or photographs of signatures, match, with precision and accuracy, in Volume R. vs. M.

Ans. I don't think that any two do; but my ideas of exactitude differ very materially from most other persons, excepting only those who have had similar long training in observing nice distinctions of differences and resemblances.

Cross-int. 78. And the enlarged photograh, well made, helps to develop the differences, and show them to the less-trained eye, does it not?

Ans. Certainly; but there are nice distinctions always to be found in any two objects, whatever their size.

Cross-int. 79. Within the last twenty years, if I understood your examination in chief, you have done little or no tracing?

Ans. Very little, except what I have done on this work. I have been almost constantly employed in drawing on photographic portraits and portraits from life.

Cross-int. 80. Are you a portrait-painter?

Ans. No. I have painted one or two portraits in miniature
402 in water-colors, as an amateur, merely. I do not paint in oils. I draw in ink and crayon.

Cross-int. 81. That doesn't involve or include tracing?

Ans. Not in the common acceptation of the term; but a portrait-painter or crayon-draughtsman is constantly tracing forms with his hand and eye, without the advantage of laying tracing paper on the object.

Cross-int. 82. Which of the tracings that were produced and shown to you and put into the case, did you trace with your own hand?

Ans. I stated in my direct examination that I did not trace certain numbers, I forget which, but that I verified them all; and that all the marginal markings of figures, Arabic numerals, were mine, but none of the letters of the alphabet, which were on one or two of them. The letters were made by my assistant, and I don't know what they mean or meant.

Cross-int. 83. I should like to have you identify those that you did yourself.

Ans. I don't think I can.

Cross-int. 84. Please look at them for that purpose.

Ans. F. W. P., 10, X, I think I traced, or repaired after it was traced. I verified all the tracings with care. F. W. P., 1, X, I think I have worked on some, on the work "Sylvia," and a little on "Ann," but the "Howland," it appears that I didn't retouch—didn't touch. F. W. P., 15, X, I think, is entirely the work of my assistant. I don't see one that I drew with my own hand, but many that I repaired and worked upon—altered by scraping off, and altered by drawing on.

Recess—1 p. m. to 2 p. m.

Cross-int. 85. Please look at those tracings, and point out the erasures that you say were made by you, some two or three of them, and then look at them through your glass, the H, for example, and state if you still see the marks of the first tracing.

Ans. I have looked at the tracings again, and pointed out to counsel for the respondents the erasures which I made, have examined the place with my glass, and say that I still see a small portion of the first tracing, which is not entirely removed.

403 Cross-int. 85. In your experience or within your observation, where erasures have been attempted, have you often found the erasure so perfectly made that some trace or mark of the original writing could not be discerned with the glass, say of such power as that which you are now using?

Ans. I have. I have two such instances on some of these tracings before me.

Cross-int. 87. Made by yourself?

Ans. Made by myself.

Cross-int. 88. Then, you had the purpose to make the erasure perfect?

Ans. I intended to make them perfect, and in the places where they are made perfect, the position of the imperfection was such as to permit erasures being made without injuring the line of the first tracing. But in the H, the imperfection lay alongside of a long line in such a manner that it was almost impossible, quite impossible, to scrape away the projecting part, or imperfection, without somewhat injuring the line to be preserved—the true line.

Cross-int. 89. I am making no question, Mr. Crosman, as to the way in which these erasures were made by you. My question has reference rather to ordinary writings, where the scrivener has written a word, which, by reason of mistake or otherwise, he desires to correct, and therefore erases the word written for the purpose of writing thereon another word, and the question is whether the erasure is often so perfectly made that, with the aid of a powerful glass, you would not be able to discern some mark or vestige of the first writing.

Ans. It is often so perfectly made as not to leave any trace of the erasure by the presence of any of the ink or pigment, but never so perfectly done but that the abrasion of the paper can be seen.

Cross-int. 90. Where the erasure is made by the knife, or other like scraper, isn't it generally the case that some vestiges of the ink are left?

Ans. Not necessarily, but generally, from the fact that, after the original writing had been sufficiently obliterated not to interfere with the lines to be rewritten, people generally cease scraping. This is my observation.

Cross-int. 91. Where the paper is wet so as to remove, for
404 want of a better word, the layers of the paper, it may be effectually done, may it not?

Ans. Yes; but not without leaving a mark on the paper, because the paper will be thinner there.

Cross-int. 92. That process of wetting is not often resorted to where the object is to insert a new word, within your observation, is it?

Ans. I don't know that I ever knew an instance of it—I have heard of such a thing—excepting once I knew of nearly a whole page of a letter being removed by bleaching, leaving either the lines at the bottom or the lines at the top, one or two, undisturbed. But that was wet with chlorine, or chlorinated water, I should have said. In some places, when the chlorine didn't act effectually, the parts were removed by abrasion.

Cross-int. 93. What was the object of that operation?

Ans. I never fully understood. The letter was shown to me as a

curiosity, to see if I thought that was not the way in which it had been treated, or how it had been treated.

Cross-int. 94. I observe you use the terms pigment and ink, apparently, synonymously. You don't mean so to use them, do you?

Ans. Yes; I think I do. I don't know of but one or two inks that are without pigment in them, after it's on the paper, after laid on the paper.

Cross-int. 95. Doubtless that's so; but then sometimes the pigment becomes separated from the acid, if that's the true word, or other liquid, so that the acid or liquid finds its way more deeply into the texture of the paper than the pigment, so that upon the removal of the pigment, the impression made by the liquid so separated from the pigment, remains?

Ans. The liquid doesn't discolor the paper much of itself. I don't think at all. And when ink is very freshly made, and before the atmosphere has acted upon it much, or at all, the particles of metal in the ink are so very minutely divided, that they will penetrate the paper very nearly as far as the liquid. and words written with fresh ink are, therefore, much more difficult to be removed by any mechanical operation than if written with old ink, older ink.

Cross-int. 96. Sometimes, where the pigment has been re-
405 moved, and the liquid has remained, an application is made by which the writing reappears. Is that so?

Ans. To a certain extent that is true, where there is some of the metal still remaining, which had been bleached.

Cross-int. 97. Is it iron in any of its forms which is used for that purpose?

Ans. Iron enters into the composition of most inks in use more largely than any other metal. Copper and potassium and chromium have been used with some success.

Cross-int. 98. And is the result there a new combination with the liquid remaining in the paper?

Ans. Yes.

Cross-int. 99. Please examine the erasure on Exhibit F. W. P., No. 11, on the third page, between the words "this" and "day," with your glass, and say whether you see any vestiges of the writing erased.

Ans. I have examined it very carefully. I don't see any.

Cross-int. 100. Which feels the restraint of the ruled line most—the short lever or the long lever?

Ans. I don't know as I could answer that question. It would require a good deal of practice. I never had it asked before, and I never thought of it before, but the amount of restraint that either would feel would depend upon whether the writer wrote straight or crooked naturally.

Cross-int. 101. Did you happen to know the fact that Exhibits 1 to 51, R. C. P., were written on the same day?

Ans. I heard it so stated, and I, in handling the papers, which I did a great deal, noticed that all I did look at, were written the same day. I looked at 12 or 15, perhaps.

Cross-int. 102. In looking at Volumes 1 and 2, R. C. P.. and at the photographs of the bills of sale of the natural size, or about the natural size, state whether you found No. 11 there—I refer particularly to Book 1, Volume 1, Plate 14.

Ans. I have looked, and I do not find No. 11 anywhere there. The photographs are numbered from 1 to 51, on Plate 14, but not in numerical order.

406 Cross-int. 103. Well, 11 hasn't been pitched upon by the examiners as one of the particular instances of covering, has it?

Ans. Not to my knowledge.

Cross-int. 104. You didn't know that 11 was not there till this moment, did you?

Ans. Yes; I knew it several months ago, and I placed it at the head of the column of names or group of names on Plate 18, Book R. vs. M., putting it there, out of the numerical position, thinking then that it might become more an object of interest.

Cross-int. 105. When were those notes that you have used in your examination to refresh your memory, and between which and the questions put to you the sequence was so striking and close, made?

Ans. I have made them, generally, in the evening, for some weeks past, as I found time to attend to them. They were made by instalments, a few at a time.

Cross-int. 106. Have you any objection to permitting counsel for respondents to examine those notes, for the purpose of completing their cross-examination?

(Counsel for complainant object to putting any documents at the election of counsel for respondents, to use or not, but will insist that, if such are produced and examined by the opposite party, they shall be put into the case and make part of the deposition. And now, the counsel for the plaintiff having made their answer to the quest[illegible] counsel for respondents says, The examiner is requested to put [illegible]e question to the witness, to whom alone it was addressed.)

Ans. I have a little, slight objection. It is nothing very serious.

Cross-int. 107. Do they contain any notes as to the case other than your own minutes?

Ans. No, none; nor any words or things of any kind that have been suggested by anybody on earth except myself.

Cross-int. 108. When did you first see George Mathiot?

Ans. I saw him in the adjoining room to this office of Mr. Thaxter's the first day he arrived here from Washington. It was a few days since.

Cross-int. 109. Did he ever see any of those notes of yours?

Ans. Never.

Cross-int. 110. Did you aid him in his examinations at all, or confer with him about them?

Ans. No.

407 Cross-int. 111. Were any other instruments used in making those tracings produced by you—F. W. P., 1, X, F. W. P.,

curiosity, to see if I thought that was not the way in which it had been treated, or how it had been treated.

Cross-int. 94. I observe you use the terms pigment and ink, apparently, synonymously. You don't mean so to use them, do you?

Ans. Yes; I think I do. I don't know of but one or two inks that are without pigment in them, after it's on the paper, after laid on the paper.

Cross-int. 95. Doubtless that's so; but then sometimes the pigment becomes separated from the acid, if that's the true word, or other liquid, so that the acid or liquid finds its way more deeply into the texture of the paper than the pigment, so that upon the removal of the pigment, the impression made by the liquid so separated from the pigment, remains?

Ans. The liquid doesn't discolor the paper much of itself. I don't think at all. And when ink is very freshly made, and before the atmosphere has acted upon it much, or at all, the particles of metal in the ink are so very minutely divided, that they will penetrate the paper very nearly as far as the liquid, and words written with fresh ink are, therefore, much more difficult to be removed by any mechanical operation than if written with old ink, older ink.

Cross-int. 96. Sometimes, where the pigment has been re-
405 moved, and the liquid has remained, an application is made by which the writing reappears. Is that so?

Ans. To a certain extent that is true, where there is some of the metal still remaining, which had been bleached.

Cross-int. 97. Is it iron in any of its forms which is used for that purpose?

Ans. Iron enters into the composition of most inks in use more largely than any other metal. Copper and potassium and chromium have been used with some success.

Cross-int. 98. And is the result there a new combination with the liquid remaining in the paper?

Ans. Yes.

Cross-int. 99. Please examine the erasure on Exhibit F. W. P., No. 11, on the third page, between the words "this" and "day," with your glass, and say whether you see any vestiges of the writing erased.

Ans. I have examined it very carefully. I don't see any.

Cross-int. 100. Which feels the restraint of the ruled line most—the short lever or the long lever?

Ans. I don't know as I could answer that question. It would require a good deal of practice. I never had it asked before, and I never thought of it before, but the amount of restraint that either would feel would depend upon whether the writer wrote straight or crooked naturally.

Cross-int. 101. Did you happen to know the fact that Exhibits 1 to 51, R. C. P., were written on the same day?

Ans. I heard it so stated, and I, in handling the papers, which I did a great deal, noticed that all I did look at, were written the same day. I looked at 12 or 15, perhaps.

Cross-int. 102. In looking at Volumes 1 and 2, R. C. P.. and at the photographs of the bills of sale of the natural size, or about the natural size, state whether you found No. 11 there—I refer particularly to Book 1, Volume 1, Plate 14.

Ans. I have looked, and I do not find No. 11 anywhere there. The photographs are numbered from 1 to 51, on Plate 14, but not in numerical order.

406 Cross-int. 103. Well, 11 hasn't been pitched upon by the examiners as one of the particular instances of covering, has it?

Ans. Not to my knowledge.

Cross-int. 104. You didn't know that 11 was not there till this moment, did you?

Ans. Yes; I knew it several months ago, and I placed it at the head of the column of names or group of names on Plate 18, Book R. vs. M., putting it there, out of the numerical position, thinking then that it might become more an object of interest.

Cross-int. 105. When were those notes that you have used in your examination to refresh your memory, and between which and the questions put to you the sequence was so striking and close, made?

Ans. I have made them, generally, in the evening, for some weeks past, as I found time to attend to them. They were made by instalments, a few at a time.

Cross-int. 106. Have you any objection to permitting counsel for respondents to examine those notes, for the purpose of completing their cross-examination?

(Counsel for complainant object to putting any documents at the election of counsel for respondents, to use or not, but will insist that, if such are produced and examined by the opposite party, they shall be put into the case and make part of the deposition. And now, the counsel for the plaintiff having made their answer to the question, counsel for respondents says, The examiner is requested to put the question to the witness, to whom alone it was addressed.)

Ans. I have a little, slight objection. It is nothing very serious.

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Cross-int. 108. When did you first see George Mathiot?

Ans. I saw him in the adjoining room to this office of Mr. Thaxter's the first day he arrived here from Washington. It was a few days since.

Cross-int. 109. Did he ever see any of those notes of yours?

Ans. Never.

Cross-int. 110. Did you aid him in his examinations at all, or confer with him about them?

Ans. No.

407 Cross-int. 111. Were any other instruments used in making those tracings produced by you—F. W. P., 1, X, F. W. P.,

10, X, F. W. P., 15, X, and F. W. P., R. C. P., 9, 15, 24, 36, 32, 18—than a pen?

Ans. No other instrument. They were all traced with a Gillott's mapping pen.

Cross-int. 112. That's within your knowledge, is it?

Ans. Yes; but I will say that when I commenced the work, I tried a crow-quill pen—a steel pen of that name—but found it didn't work as well as the mapping pen. It is possible that one or two of those tracings were made with the crow-quill, but I think they were all made with the mapping pen.

Cross-int. 113. Describe that mapping pen.

Ans. It is a very fine pen, shaped like the ordinary pens, made smaller, of very thin metal, and with a very sharp point.

Cross-int. 114. Did you see in any of those signatures to the bills of sale, 1 to 51, any evidence of defective vision in the writer, or in the power of attorney, or the deed?

Ans. No; I did not.

Direct examination resumed:

Int. 1. Please refer to cross-interrogatory No. 4, and the answer to it, and state whether you mean to say that you saw anything, and, if so, what, on the manuscripts in said question referred to.

(Objected to as leading, and because, after the position taken by counsel for plaintiff in that regard, the matter is not open to them.)

Ans. I saw nothing distinctly. I saw the manuscripts lying about here—only saw the manuscripts lying about here.

Int. 2. State whether or not you have made any, and, if so, what examination of the signature Sylvia Ann Howland to F. W. P., 1, 10, and 15, with reference to their departure from, or correspondence with, each other, as to their base line, when superimposed. State in detail all the examination you have made of the different letters.

(Objected to as re-examination upon a matter not opened by respondents, and as part of a subject-matter upon which the witness was fully examined in chief.)

4.30 p. m.—Adjourned to Wednesday, May 8, 1867, 10 a. m.

Ans. I have examined those signatures, especially as magnified on the large scale, and shown in the books R. C. P.—I don't mean those magnified on the largest scale; I mean as shown on Plate 5, of Book 1, Volume 2, R. C. P., and found that the lower part of the l in Sylvia, in Sylvia Ann Howland, as exhibited on said plate, is about two-sixtieths ($\frac{2}{60}$) of an inch above the base-line. The lower part of the l in Sylvia, in the upper name on said plate, is about two-sixtieths of an inch above the base-line. The l in Sylvia, in the middle name on said plate, which is, I suppose, No. 10, F. W. P., is about four-sixtieths ($\frac{4}{60}$) of an inch above the base-line. And that the l in Sylvia, in the lowest name on said plate, touches, or very nearly touches, said base-line. That the v in Sylvia, in the upper name on said plate, is about three-sixtieths ($\frac{3}{60}$) of an

inch above said base-line. That the v in the middle name on said plate is about three-sixtieths ($\frac{3}{60}$) of an inch above the base-line; and that the v in Sylvia, in the lower name on said plate is about two-sixtieths ($\frac{2}{60}$) of an inch above the base-line. That the i in the upper name is about three-sixtieths ($\frac{3}{60}$) above; that the i in the middle name is about four-sixtieths ($\frac{4}{60}$) above; that the i in the lower name is about three one-hundred-and-twentieths ($\frac{3}{120}$) above. For further measurements I refer to the fractional numbers under each letter on the plate I am about to produce to be annexed to this my testimony, which indicate the varying departure of the different letters in the different signatures from the base-line, and I state that the memorandum over the dot of the i in the middle name indicates a departure of five-sixteenths ($\frac{5}{16}$) of an inch, about, from the dot over the i in the lower name. (The witness now produces a photograph to the examiner, who marks it for identification, F. W. P., Photograph D.) On superposing the rider of the middle name, No. 10 over 1, and placing the w of the rider of 10 so as to cover in the best manner the w of No. 1, I found that the base-line of 10 crossed that of 1 at an angle of several degrees, upwards, from left to right. On superposing the d in 10 over d in 1, so as to cover in the best manner, the base-line of 10 crossed the base-line of 1 at an angle of several degrees, downwards, from left to right. On superposing the l of 10 over the l in No. 1—the l in Howland, I mean—so as to cover in the best manner, the base-line of 10 crossed the base-line of 1 at an angle of several degrees, upwards, from left to right. On superposing the l in Sylvia in 10 over the l in Sylvia in 1, the base-line of 10 covered that of 1 at an angle of several degrees, upwards—nearly twice as many degrees, upwards, as the last-named angle of crossing. I beg pardon; I made a mistake. I allude now to the letters i in 10 and 1, superposed, instead of l. The l in Sylvia, when superposed, 10 over 1, causing the base-lines to cross at a lesser angle than the l. (The examiner here calls the attention of the witness to this obvious slip of the tongue. Counsel for respondents desire him to note the fact.) Than the i, I should have said. [I have examined the signatures 1, 10, and 15, F. W. P., with a great deal of care in regard to their general resemblance with each other, and also the similarity and dissimilarity of each of the letters in each signature. I found very little resemblance in the general expression in the signatures; none that would lead me to suppose one was traced from the other. In the H in Howland, in No. 10, the right-hand column of the H has a broad, bold, open eye or loop, at the top, with a superfluous down-stroke or hair-line running through it longitudinally. There is no such thing in No. 1, no resemblance to it whatever; that part of the H in 1 being made of a single line, apparently a single line, and rather slender, compared either with 10 or 15. The A in Ann, in No. 10, has a superfluous line near its top, parallel with, or nearly so, the original line forming that part of the A. The d in 10 has a long line turning upward from the base-line nearly three-quarters the length of the column of the d—of the down stroke of the d—while the d in 1 terminates with

409

a blunt, stub-like line, at an angle perhaps of thirty or thirty-five degrees, downward, from left to right. The first n in Ann in No. 10 has a broad space between the down-strokes, while the first n in Ann in No. 1 has a space not more than one-third the size. The last n in Ann in No. 10 has a narrower space, much narrower, between the down-strokes than the last n in Ann in No. 1. I see what I believe to be several retouches in the signature in 10, besides those just alluded to, and which I noticed in the signatures of Sylvia Ann Howland on Plates 15 and 16, in Book R. vs. M., F. W. P. The
410 down-stroke of the A in Ann in 10 and 15 is remarkable for its dissimilarity to the down-stroke of the A in 1. In No. 1, said down-stroke, at its lower part, turns in a graceful, oval curve upward and onward, so as to cross the ascending hair-line in the A, and to form a distinct open loop, with a well-pronounced eye in it on the left-hand side of the ascending hair-line of said A. But in 10 and 15, the down-stroke of the A comes to a decisive termination, as though there was nothing more for the pen to do in that direction. At a little distance above the lower end of said down-stroke in 10 and 15, there proceeds from it a hair-line to form the cross of the A, forming an angle with the down-stroke which, for want of a better word, I will call a plano-spherical angle, or something such an angle as the barb of a fish-hook forms with the bow of the hook. Said hair-line forms a loop for the cross of the A, perfectly within the ascending and descending lines which form the A. These characteristics are so distinct from the signature in 1 that I cannot suppose or believe that 10 or 15, and especially 10, with its superfluous retouchings, could have been traced from 1. I haven't noticed all the dissimilarities which I see between 10 and 1, and 15 and 1, but I think I have mentioned enough.]

(Respondents object to bracketed portion of answer as irresponsive and wholly irregular.)

Int. 3. State whether or not you have made any, and, if so, what examination and with what result, to see whether the photographs on F. W. P., Photograph D, were or were not taken from the same negative as the photographs on Plate 5 of Book 1, Volume 2, R. C. P.

Ans. I have made the examination, and I have no doubt at all but what they are from the same negative.

Int. 4. Please look at books marked F. W. P., and numbered respectively from 2 to 6, inclusive, now shown you by the examiner, and state under whose direction, if you know, they were prepared or made.

Ans. They were prepared and made by myself, and by my direction.

Int. 5. State how they are prepared, with reference to the way in which Book R. vs. M. was made or prepared, in all respects.

Ans. As nearly the same as it was possible to make them. I wish to say that there is one page in one of the volumes which has been transposed by the bookbinder and placed one page beyond the position it should occupy.

Int. 6. State where you obtained the photographs Sylvia

411 Ann Howland, and riders, in the pockets inside the cover of the books referred to.

Ans. They were placed in my hands by Mr. Francis Bartlett.

Cross-examination resumed, de bene esse, not waiving the objections to the re-examination :

Cross-int. 1. The base-line in this photograph, F. W. P., D, is drawn, is it not, from the downward termination of the S on the left to the downward termination of the d on the right ?

Ans. Yes; it is intended to be so drawn.

Cross-int. 2. How drawn; with what instrument ?

Ans. I drew them with a common ruling pen, and with a pair of ordinary parallel rulers—wooden ones. There was no particular attempt at great accuracy, at extreme accuracy.

Cross-int. 3. Please look at the S in Sylvia, in 10, and measure the distance between the termination of the S and the base-line beneath it.

Ans. I think the distance is about the one-hundred-and-twentieth of an inch, but that variation doesn't extend more than an inch and a half in distance of said line, and is caused by the ruling-pen's not delivering ink at that particular point, and scratching a white line, instead of delivering ink, for a distance of about an inch and a half, or two inches, perhaps. If the pen had delivered its full quantity of ink, the line would have touched the bottom of the S.

Cross-int. 4. I wish you would look at it again and see whether that is so or not, about the pen not discharging its ink at that point.

Ans. It is so; that the pen did not discharge its ink at that point, and it is possible that if it had, it might not have spread sufficiently to reach the more distinct termination of the S, but it would have flowed into the penumbra surrounding it, as much as it does in the d at the end of the word.

Cross-int. 5. Now, the termination of the base-line at the right depends upon the thickness of the termination of the d, does it not—meaning by that the last turn in the last stroke of the d ?

Ans. Yes; so far as relates to measurements.

Cross-int. 6. The base-line under No. 1 has been redrawn, has it not, and part of it is a double line ?

412 Ans. Yes.

Cross-int. 7. The three base-lines are not parallel lines, are they ?

Ans. I never looked to see. On looking, I find they are not. The upper and lower are very nearly so.

Cross-int. 8. I understand you that Photograph D is from the same negative as Plate 5 in Book 1, Volume 2, R. C. P., in your opinion; and that Plate 5, I understand you to have testified, as the other photographs in these two volumes is distorted. Did I understand you rightly ?

Ans. You understood me rightly in saying that I believed, and I still believe, that Photograph D is from the same negative as that Plate 5, but I don't remember of having said that the photograph on

Plate 5 was distorted. I said, probably, that the riders didn't correspond with the accompanying photograph, and I am willing now to say that if it was done with the same means and the same instrument as the enlarged photograph of the engineer's scales—fragments of scales, I should have said—on Plate 12, that it is distorted.

Cross-int. 9. Well, sir, you testified to having made a careful examination—a most careful and thorough examination—of the contents ofBook R. C. P., Book 1, Volumes 1 and 2. Now, what is your opinion, whether these photographs, as mounted on Plate 5, are or are not distorted?

Ans. It is my opinion that, if they were made by the same means and the same instrument as the engineer scales on Plate 12 were made, or that if they were made by an ordinary Voigtlander instrument—lens, please—they must be distorted. I never saw and never heard of a true figure being made by a Voigtlander lens.

Cross.int. 10. Well, without the two ifs and the one condition, what is your opinion—whether that is a distorted photograph or not?

Ans. I don't know that I have a decided opinion on the subject. I always endeavor not to have opinions on subjects that can be demonstrated. There need be no opinion about this photograph. It is true that it is or is not distorted, and the fact can be ascertained by any one having the necessary qualifications and instruments for analyzing it.

Cross-int. 11. Assuming that that photograph was made with a Voigtlander lens, is it, in your opinion, distorted or not?

413 Ans. If it was made by a Voigtlander lens it is my opinion that it is distorted.

Cross-int. 12. Now, Mr. Crosman, I want to ask you whether, before your examination of those books, R. C. P., Volumes 1 and 2, you were not given to understand that the photographs therein contained were made with a Voigtlander lens; and whether, especially, with reference to Photograph A, handed you by Mr. Francis Bartlett, and its rider, and Photograph D, also handed you by him, you have not understoodand acted upon the understanding that they were made by a Voigtlander lens?

Ans. I knew before I commenced the examination of those books, or suspected, that they were made with a Voigtlander lens. In regard to the photographs handed me by Mr. Bartlett, I supposed they were made by the same lens, but there was no particular understanding, or understanding at all, in regard to their use, except that I was to mount them and make riders—make part of them transparent.

Cross-int. 13. You use the words "suspected" and "supposed." Allow me to ask you if you were not told, and I ask the question in the presence of the counsel for the plaintiff in this case, that the photographs in the book R. C. P., Volumes 1 and 2, were made by a Voigtlander lens, that the fact had been so testified, and your attention called to and inquiry made of the character of the Voigtlander lens?

Ans. I supposed and suspected that the photographs were being

made with a Voigtlander lens, before I knew or ever saw, to my recollection, Mr. Bartlett, but I was informed, I think, by Mr. Francis Bartlett, one of the counsel for the plaintiff—either Mr. Bartlett or Mr. Thaxter—that a Voigtlander lens had been used in making these photographs in the books R. C. P., and I think was inquired of by the person who gave me the information, if the Voigtlander was the best instrument, or which was the best instrument, or words to that effect, for making true copies, and that I said the globe lens was the best.

Cross-int. 14. Well, Mr. Crosman, you have no doubt, have you, that these photographs I have inquired of were made with a Voigtlander lens?

Ans. Scarcely any—not much more doubt than I have
414 whether the sun will rise to-morrow; but still I am not sure—couldn't be sure without seeing them made.

Cross-int. 15. Well, if you believed they were made by the Voigtlander lens, you believed they were distorted? If I understand your previous testimony the one was the necessary result of the other, wasn't it?

Ans. Certainly.

Cross-int. 16. Now, this long and minute examination and comparison of the differences between F. W. P., No. 1, No. 10, and No. 15, were made by you upon and predicated upon these photographs which you knew to be distorted, or which you had no more doubt were distorted than you had that the sun would rise to-morrow?

Ans. Yes.

Recess—1 p. m. to 2 p. m.

Cross-int. 17. You regard photographic copies, and especially enlarged photographic copies of signatures and other handwriting, as furnishing important aid upon the question of their being genuine or feigned, or original or traced, do you not, if the photographic copies are well taken?

Ans. I regard such copies as very great and very important aids for determining such questions, when the photographs are well done, or when tolerably well done; when they approximate to accuracy.

Cross-int. 18. And, Mr. Crosman, those photographic copies, especially the enlarged ones, serve especially to develop and make more clear the differences which might not be so readily perceived in the originals, do they not?

Ans. Yes.

Cross-int. 19. I want you should look at No. 15, on Photograph A, exhibit produced by the plaintiff, and see if you see under the S in Sylvia a base or horizontal line?

Ans. I see it distinctly. A short mark, about a quarter of an inch in length, not more.

Cross-int. 20. Do you see the same or a like mark under the capital A in the same signature.

Ans. I see a like mark rather against than under that A, but very near the bottom. I have often noticed it before.

415 Cross-int. 21. Did you notice it in Exhibit F. W. P., 15, the original exhibit?

Ans. I don't know to what you refer.

Ans. Int. 22. Did you notice the mark under S to which you have testified, in the original exhibit, F. W. P., 15, either under that letter or under the capital A in Ann?

Ans. I don't remember; I remember seeing it in the enlarged photograph. I don't remember seeing it in the original paper.

Cross-int. 23. Now will you do me the favor to look at the tracings produced by plaintiff, made as you say, under your direction, and see whether that base-line appears in them under the S or under the A?

Ans. In neither case; in neither the one or the other. They were not made, because, if I had noticed them, I should not have supposed they belonged to the writing.

Cross-int. 24. Was it not a sufficient reason for not making them that you didn't see them, without the additional reason that you have given?

Ans. Perhaps so, and perhaps not. I saw the marks on the large photograph, or one of the marks, but supposing they didn't belong to the signature, that they were accidental, I didn't trace them.

Cross-int. 25. When did you first see this paper that I now show you, F. W. P., Photograph A, in any form?

Ans. I don't recollect distinctly, but I think two to four weeks since. I don't remember when.

Cross-int. 26. Haven't you any means of fixing when you first saw that?

Ans. No.

Cross-int. 27. When did you first see these volumes, R. C. P., 1 and 2?

Ans. As near as I can fix the time, the latter part of December or the first part of January, perhaps, but I have a very indistinct recollection about it.

Cross-int. 28. Look at Plate 11 of Volume 1, R. C. P., and state whether the base-lines as to which I have inquired of you, under S and A, appear in those photographs.

Ans. They do.

Cross-int. 29. Whether, upon our examination of those
416 volumes and that plate and the others from the same negative, you observed those base-lines?

Ans. I observed those marks which are termed base-lines; I observed them in all, I believe, the photographs from that negative, as near as I remember; and I observed similar base-lines or marks. One projected from the first part of the a in Sylvia, at and near the junction of the hair-line of the i with the first down stroke of the a, and another from the dot of the i, [all of which I did not trace, as I supposed they were made by some accidental movement of a blotter or sleeve over or upon the ink, before it was dry.] I noticed them all when I made the tracings.

(Respondents object to bracketed portion of answer as irresponsive.)

Cross-int. 30. Do you speak of a line under the dot of the i, or an extension of the dot, or what do you speak of?

Ans. I speak of marks from the dot of the i—one very straight, the other a little curved—[which I supposed were made by the same cause that made the other marks. I noticed them when I made the tracings, and rejected them as accidental.]

(Respondents object to bracketed portion of answer as irresponsive.)

Cross-int. 31. You made, or assisted Mr. Black in making, all the photographic copies which you were directed or requested to make by counsel for plaintiff, did you not?

Ans. I made all they requested me to make, and more; that is, they didn't ask me to photograph all the signatures I did photograph. That was left to my judgment and discretion, I supposed, and I acted accordingly.

Cross-int. 32. That judgment was formed and discretion exercised by you, after a careful examination of the papers and consideration of the matter, were they not?

Ans. Yes; and also after having photographed one name of each of the parcels of signatures.

On hearing the answer to question sixty-two, direct, read, the witness says: I wish to correct that by saying that there is no ruled line in the power of attorney and deed; that is, under the signature of Sylvia Ann Howland; she wrote those signatures in her natural hand.

On hearing the questions and answers numbered sixty-five and sixty-six, in the direct, read, the witness says: I wish to add
417 that I examined those books with very great care in relation to all the photographs purporting to be of the same size as their originals, but I did not examine with much care the large work anywhere in those books, excepting to compare the riders with their accompanying opaque photographs, and the large photographs of engineers' scales, and that, not finding No. 4 in the photographs of original size, I inferred, as a matter of course, it had not been enlarged. In comparing the riders on some of the bills of sale—the enlarged riders—I noticed No. 4 on one of the enlarged photographs, and didn't examine the enlarged photographs to see if 4 was repeated there, because I couldn't imagine any use for it enlarged at all; and my examination of the books related, almost entirely, to such work there as I considered important in the case.

(Respondents object to whole of this correction as not responsive to questions sixty-five and sixty-six, and as incompetent.)

On hearing read the answer to cross-question sixteen, cross-examination resumed, the witness says: I wish to add to that answer, "yes;" that, if I had not been considerably exhausted, I should have stated that those distorted photographs were used, because I did not think their distortion was sufficiently great to seriously affect their use for the purpose or purposes for which they were made. I have repeatedly, I should think a half a dozen times, within a few months, said this, or words equivalent, to the counsel for the complainant.

(Respondents object to this last paragraph as being an additional

statement and not a correction, as being irregular and uncalled for and incompetent.)

The witness also states that he desires to add to his answer to cross-question ninety-eight, the following words: It is a new combination formed, not by adding iron to iron, but adding gallic acid or a mixture of gallic and tannic acid to the iron remaining in the paper after bleaching.

THURSDAY, *May* 9, 1867—9.30 a. m.

The examination of the witness, partially read May 7 and May 8, is read to the end this day.

J. C. CROSMAN.

418 *Deposition of Louis Agassiz.*

May 9, 1867, Louis Agassiz, of Cambridge, aged fifty-nine years, being duly sworn, testifies as follows:

I have been devoting my whole life to the study of natural history. I began as a child, and have pursued it to this day; I am studying now; I am a student; that pursuit involves the use of the microscope very extensively.

Int. 1. Whether or not have you examined with the microscope the signatures to the papers now shown you, marked respectively F. W. P., 1; F. W. P., 10; and F. W. P., 15, and, if so, carefully or otherwise, and through how many grades or ranges of power of the microscope, if more than one?

(Objected to for form and substance.)

Ans. I have examined these papers very carefully in the way in which I genenerally examine objects submitted to various magnifying powers. First with my naked eye, and with spectacles, and with simple lenses of various powers from one-half to two diameters. Such a preliminary examination I always make in order to become acquainted with the object in its totality, when the low power permits to see the whole ohject at one time, and ascertain its general appearance. I next examined it with the compound microscope with three-inch power, when entire letters or even words might be seen simultaneously. I then applied higher powers, half-inch and four-tenths. Handwriting does not admit of higher than these powers, because then only small parts of letters can be brought under the focus. To such a comparative examination I have submitted all three signatures, as a whole, where the power allowed it, and in parts, where the magnifying power made it necessary.

Int. 2. Whether or not did the microscopic power employed by you upon these signatures exceed or fall short of thirty diameters?

(Objected to for form.)

Ans. The preliminary examination was much below, and it never exceeded two diameters, but the subsequent examination with magnifying power exceeded it many times. I have not reduced a half-inch power to diameters, and I cannot say whether it was a hundred and twenty or a hundred and thirty. It may be a hundred and fifty. I really do not wish to make a positive statement, but I am able to

say positively that it was many times thirty. It is just like
419 the case of asking a man the length of his step in walking. The length of the pace may be three feet, and may be two. He cannot tell how long it is without measuring. (At this point, the witness having asked whether all he said was to be put down, the examiner gave him the appropriate instruction, and then asked him if he had completed his answer to the question. The witness then says:) The substance of my answer is this, that the preliminary examination was made with magnifying means not exceeding two diameters, and ending with an examination with the compound microscope, with half an inch and four-tenths of an inch power, to reduce which to diameters I haven't taken the precaution, though it exceeds many times thirty diameters—though my impression is, that it exceeds many times, and the precise measure can be ascertained any moment.

Int. 3. Whether or not is training required for a proper use of the microscope, or can it be successfully and accurately used without such training?

(Objected to as immaterial and leading.)

Ans. Well, it is with that as with all tools. He that has had long training is master, if he brings the proper application, proper care, to his work. There are those who acquire it very rapidly, but the perfection of our instruments is such now-a-days, that microscopic examinations have acquired a high degree of precision, depending chiefly upon the possibility of bringing a point under examination into the focus of the microscope.

Int. 4. Upon examination of the signature to paper marked F. W. P., 10, as you have stated, with the miscroscope, could you or not discover any mark or marks of its having been first traced with a pencil and then written over with ink?

(Objected to as leading.)

Ans. The signature in paper No. 10 exhibits great inequality in the intensity of the color of the letters, even when seen with the naked eye. I examined particularly the points where this inequality appears, with a view of ascertaining what might be its cause. With low powers, it looks as though there were two substances forming part of the individual letters. On applying the higher powers, the cause of this difference—this difference, not the cause—appears still more striking. The highest powers used disclosed clearly the texture of the paper, and the manner in which the materials used for writing—the material—is distributed in its structure. With such a power, it appears that the paper consists of fibres felted to-
420 gether, intercrossing each other in every direction, not unlike a pile of chips, pressed together. It is easy to trace with the microscope the fibres that lie at the surface, and distinguish these with those at successive greater depths. Into this felt the ink has penetrated, and penetrated unevenly, the thicker parts of the ink being accumulated along the more superficial fibres of the felt, the more fluid part penetrating deeper, and here and there both merging together. The appearance of those two materials is owing—before that phrase I should like to add one word. This uneven dis-

tribution of the component elements of the ink has somewhat the appearance of the accumulation of mud, containing particles of different thickness, caught up among brushes—just as you have it along the river side after a freshet. To this unequal distribution of the component elements of the ink, unequal appearance in the darkness of parts of letters is undoubtedly owing. The highest power applicable to objects of such coarse character as these did not disclose the slightest indication of materials foreign to the ink as seen in any part of the signature. Pencil not being a fluid substance, if used in this case, would have left its mark on the superficial fibres of the paper, and remained there, while, in every part of the letters which look lighter than others, the lighter color is deeper in the substance of the paper, and the accuracy with which the focus of the microscope may be made to bear in succession from the surface deeper, leaves no doubt upon this point. Moreover, throughout the signature, this inequality in the distribution of the component materials of the ink is more or less observable.

Int. 5. Under the microscope, how does the signature to F. W. P., No. 1, appear, in these same particulars?

(Objected to, form.)

Ans. The ink used in No. 10 is generally thicker and darker than that used in No. 1. The accumulations of coarser component elements is greater in No. 10 than in No. 1, but the same inequalities in the distribution of the material, forming darker and lighter parts in the same letter, owing to an inequality in the degree of fluidity of the materials of the ink, may be seen in signature No. 1 as in No. 10. It is so many days since I examined that, that I try to remember some particular letter, but I am — In several letters streaks of darker materials are plainly visible on darker ground in signature No. 1 as well as in No. 10.

421 Int. 6. Under the microscope, is there any, and, if any, what difference between the appearance of the signature F. W. P., 10, I mean the signature to paper F. W. P., No. 10, and the signature to paper F. W. P., No. 1, as to its having been first written with a pencil and afterwards with a pen and ink?

(Objected to as leading.)

Ans. My answers to the preceding questions are already in answer to this. There are in signature of paper No. 1, parts of the letters in which portions of the writing material of darker color rests upon portions of the same letter of lighter color, passing into parts of the letters where the blending is uniform—the blending of the writing materials is more uniform. With the exception that the signature of No. 1 is generally paler than that of No. 10, the inequalities of the two signatures are of the same character—more marked in No. 10, owing to the greater difference between the more and less fluid portions of the ink. That's all.

Int. 7. Suppose a witness to have testified as follows, (interrogatory 12,) "No. 10 was copied by being placed over No. 1, and written over with a lead-pencil wetted, or some instrument of the kind, and then written over with pen and ink. No. 15 was written over

the signature on No. 1, without the intervention of a wetted pencil or similar material." Will you state whether or not, under the microscope, there was or not anything seen by you to justify such a statement, and, if so, what?

(Objected to as leading, and because the witness is not called to pass judgment upon the examination of other witnesses, but to state facts, leaving the judgment to the proper tribunal.)

Ans. I have carefully compared the three signatures, besides examining them singly, and in no one of them can I detect indications of the use of two kinds of materials in tracing the letters. In this respect, I perceive no difference between these three signatures, except that the ink of paper No. 10 is thicker than that of the two others. In all three, the lighter part of the writing is more deeply seated than the darker part, and in all three it is equally plain that the unequal distribution of the writing material is owing to the unequal fluidity of the component elements of the ink. In no one could I detect, either in the lighter parts of the letters or anywhere else, signs of the use of pencil or other writing materials, besides the writing materials forming the bulk of the signature, nor did I detect any indications of that kind of alteration of
422 the surface of the paper which would result from rubbing or scratching with India-rubber, or other means of erasing pencil writing.

Int. 7. Suppose a witness to have stated, in relation to signature to paper F. W. P., No. 10, as follows, (cross-interrogatory 63,) "Every letter, under the microscope, bears the evidence of the tracing by the use of a wetted pencil or some other similar material, before the ink had been put on to it, and in letters S and a in Sylvia; the latter part of n in Ann, the last n; the upper loop of the H; the a and the continuation of a to n in Howland, all show the marks of the pencil or other material which have not been covered by ink." Will you state whether or not the particular letters mentioned were particularly examined by you under the microscope; and, if so, with what result as to the correctness or incorrectness of the statement?

(Objected to as calling for the opinion of the witness instead of facts; as examination of the witness upon a matter on which he has already been examined and fully testified, and in the nature of cross-examination, and as leading.)

Ans. I have examined those particular letters with reference to the inquiry, and it is in these letters that the inequality of distribution of the component materials of the ink is most prominent, but in various degrees it exists throughout the signature. There can be no doubt that the more—the lighter parts of the letters have been mistaken for marks made with other materials than that with which the whole signature is written, but I reiterate, with reference to these specified letters, my statement, that the darker and the lighter portions of the handwriting is the result of the unequal penetration of the writing material into the paper. I have looked for the presence of lead-pencil or other materials in the specified letters and found no trace of them.

Int. 8. Have you compared, under the microscope, the signatures to F. W. P., No. 10 and No. 1, with a view to find whether or not there were any discoverable marks of any description showing that No. 10 had been traced from No. 1? If so, with what result?

(Objected to as the witness is not shown to be an expert in matters of tracing or handwriting generally.)

Ans. I have; and I can state that there are no two letters in the two signatures that have the same form. The first arm of the S in No. 1 is thin and nearly perpendicular. In No. 10 it is thick and oblique. The y in No. 1 is connected with the preceding S.
423 and has no connection with it in No. 10. The second arm of y in No. 1 is arched, and terminates with a sudden bend. In No. 10 it is at first straight, and terminates with an open curve. In No. 1 the upper arm of l is slim. In No. 10 it is shorter, and broad, club-shaped. In No. 1 the v has its upper arm distinct from the first. In No. 10 it is merged into it. The i in No. 1 is nearly vertical, and curves—rounded off below, the dot being to the right of its summit. In No. 10 the two arms of the i form a sharp angle—an acute angle—in the other, its rounded. The dot of the i in No. 10 is to the left, so that, in the two papers, if one were put on top of the other, the dots of the i would be about one-twelfth of an inch apart. The A in Ann in No. 1 has the second arm shorter than in No. 10, and differently formed. The thread which passes from the second arm to the first, before connecting with the n, extends beyond the first arm in signature No. 1, while it remains between the two arms in signature No. 10. The first n in No. 1 is much smaller than in No. 10, and differently shaped, the two arms in No. 1 being much closer together than in No. 10. Moreover, in No. 10 the second arm of the n rises above the first, which is not the case in No. 1. The second n in No. 1 has its second arm more distant from the first than in No. 10, and its form is also different, the second arm being almost vertically in No. 10, while it is slightly inclined from the right to the left in No 1. In Howland, in No. 1, the eye of the first arm of the letter is broadly open. It is almost closed in No. 10, the direction of the first stroke being a curve in No. 1 and an oblique line in No. 10. The first arm of H in No. 1 is evenly slanting. In No. 10 it is first slightly and then much more slanting. The second arm of H, in No. 1, is a simple line. In No. 10 its upper part forms an open eye. The o is closed in No. 1, and narrow. It is much broader and open in No. 10. The w in No. 1 has the second arm much smaller than in No. 10. The l in No. 1 has a broken line at its lower end. It is simply bent in No. 10. a in Howland in No. 1, has its first arm with decided eye, and the second arm in its lower part sharply bent. In No. 10 there is no eye, and the lower arm of the a is evenly curved. In No. 1 the first arm of n is connected with the second arm in its upper part. In No. 10, the lower part of the first arm passes immediately into the upper
424 part of the second arm. In No. 1 the first arm of the d is simple, in No. 10 it has an eye. And the second arm in No. 1

terminates abruptly below, while in No. 10 it bends into a long point —that's all.

Cross-examination :

Cross-int. 1. When did you first see the counsel for plaintiff in connection with this case ?

Ans. Last week. What day was it? I don't remember. I could find out at the museum. Last week—let's see—about a week ago—I made no memorandum of it.

Cross-int. 2. Was that the first time you had seen any one of the counsel for the plaintiff in relation to the cause ?

Ans. I have only seen one—[I now recall exactly what the circumstances were—Mr. Bartlett, not seeing me, sent up a note asking at what time he could see me about a business matter, without stating what it was. I sent him word that I would see him at the museum at any time that would suit him. He then informed me what was the object of his errand, and I appointed a day at the museum for the examination of the papers, which I did examine in his presence, showing him as I went on, every stage of the process under the glass, first the lens, then the microscope, in order to satisfy him of the correctness of every piece of information I gave him. I looked upon it merely as information I was giving him, as I hadn't been asked to be a witness, and didn't know I should be.]

(Respondents object to bracketed portion of answer as not responsive to the question.)

Cross-int. 3. Did Mr. Bartlett make any statement to you about the case ? The question does not call for what statement he made, but if he made any ?

Ans. About the case itself, not. About what he wanted of me with reference to it, yes.

Cross-int. 4. In some way designate the instruments you used, if you can, by the name of the maker, or otherwise.

Ans. The small lenses for preliminary examination I used, I hardly know the maker's name. They are ordinary lenses of small value. The higher powers were from a microscope made in Paris by
425 George Oberhauser, a well-known maker, and belonging to me, and then I repeated the observations with another microscope belonging to Dr. Wilder, my assistant—one of Smith and Beck's make—a well-known English firm of microscopists.

Cross-int. 5. In relation to the power of the instruments used, I understand that you did not give the measure of the instruments in diameters, "though it exceeds many times thirty diameters." Please explain that.

Ans. In our estimation of the magnifying power used in investigations we have two methods, employed indifferently by different investigators. One consists in indicating the number of diameters by which the object is magnified ; the other, the focal distance, which are convertible terms. Now I have looked at the instrument I used, and I know it is one-half and four-tenths ; but I have not looked at the table, the scale indicating the diameter which that gives. But in the whole of this investigation no real high powers were used,

such as are called high powers by microscopic investigators—such as from two hundred diameters to one thousand and fifteen hundred and more. The application of such powers on these objects would be utterly impossible, owing to the opacity of the paper; but the familiarity with the microscope tells me that, making allowances for the microscopes of different makers, a lens of half an inch focal distance approximates the magnifying powers estimated at about a hundred diameters, which is many times thirty, and no greater accuracy is needed to form an estimate of the character of the investigation; just as, in the use of the centigrade or Fahrenheit or Reaumur thermometer, if a statement goes to say that it is eighty-five or ninety, and that it approaches thirty-two or thirty of the centigrade or Reaumur, without one being the exact reduction of the other. To that extent, and in a similar way, is my statement correct that a magnifying power of half an inch is equal to many times one of thirty diameters.

Cross-int. 6. What I wanted to get was an explanation of the answer you gave that you did not take the precaution to reduce the measurement to diameters, though it exceeds many times thirty diameters. If you cannot give us the exact measure, will you give us the closest approximation to it which you think it safe to state?

426

Ans. I have never made microscopic measurements a speciality. I have not used a micrometer while making this examination, which I might, if it had been to any purpose. It is well known among those who use the microsocope that accuracy is not necessarily dependent upon the dimensions of the magnifying power, but upon the accuracy with which the lens defines the object, which depends upon the quality of the glass and the perfection with which it is cut. It is equally well known that, owing to this inequality in the lenses, accurate results may be obtained with lower powers of a superior order more trustworty than with higher powers, the lenses not being so perfect. This being the case, I venture to say, that, with a good lens, magnifying thirty diameters, everything I have seen concerning these signatures could be distinctly observed by a trained eye.

(Answer objected to as irresponsive.)

Cross-int. 7. Now I want to have you give us your best approximate judgment of the power of the instrument used by you in diameters, and if you say you are unable to do it satisfactorily to yourself, that will close that part of this examination.

Ans. As the character of a scientific man depends upon the accuracy with which he proceeds to his work, I do not feel able to answer that question without reference to tables.

Cross-int. 8. Please to examine your minutes and ascertain the power thus measured, and let us have it.

Ans. I will ascertain. I have no minutes. I shall have to take the microscope I used and examine to measure the diameters as compared with the focal distance. That I shall do. I have kept no minutes of the examination I made, and all my answers were from memory.

Cross-int. 9. Of what material is the paper made on which these three instruments, F. W. P., 1, 10, and 15, are written?

Ans. I haven't examined the question. It was not propounde d to me. [Pounded woody fibre, pounded cotton fibre, pounded fibre of different kinds of vegetables, might be distinguished by a proper microscopic examination requiring much time and labor, unless made by a person who has taken up that subject as a matter of particular investigation. I believe there are such men, but I have not applied myself to that point. The gross, fibrous structu re of the paper, however, is readily recognized with very low magnifying power, and its mechanical action upon a fluid containing ingredients in
427 various degrees of solution ascertained without the examination of the specific character of the fibres, just as to return to a comparison made before, the obstructing effect of brushes on a river bank may be ascertained without identifying the particular kind of brush, as to their vegetable character—alder, beach, or something else.]

(Bracketed portion of answer objected to as irresponsive.)

Cross-int. 10. If I understand you rightly, then, the examination you made did not develop to you, or, if it did, you didn't observe the material of which the paper was made?

Ans. I didn't look for it.

Cross-int. 11. Now those sticks on the river bank might equally well uphold the mud, to use your illustration in substance. Does it follow that the different sticks would have, as to the fluid, the same absorbent power?

Ans. I do not think, but all I was looking for was at what level in the felt the different parts of the ink had penetrated, and I found that the lighter-colored parts of the handwriting more uniform throughout than the darker and coarser material, must from its position have passed between the interstices of the fibres of the paper, while the darker were more outside. That therefore the lighter was the more fluid portion of the ink, and could not consist of the dry materials a pencil mark leaves on the sheet of paper, and these particles of lead are too coarse thus to penetrate the paper. Moreover, the manner in which the darker and lighter parts of the writing material blend together, in almost every letter, shows that the writing is made by one tracing, one single tracing, and the inequalities of the appearances are the result of the manner in which the ink sets into the paper—the different parts of the ink sets into the paper.

(Respondents object to answer as irresponsive.)

Cross-int. 12. Is there any difference in the power of linen, cotton, or woody fibre of paper—of which paper is made—to absorb the more fluid parts of the ink?

Ans. No doubt there is, but I do not know to what extent, and it will, in a measure, also, depend upon the materials used for binding together the vegetable fibre, and also upon the degree of polish finally imparted to the surface of paper, as we daily experience when using very smooth paper or rough paper or more or less bibulous paper.

428 Cross-int. 13. Did your examination enable you to determine of what material or materials the pigment of the ink was composed.

Ans. I have not examined into that point. I noticed, simply, that in the signature of paper No. 10 there were a larger number of little black granules, looking like dried-up ink that had been redissolved, in a larger proportion than in the other signatures, No. 1 and No. 15, in which like granules, though in a smaller quantity, did also exist.

Cross-int. 14. Did I understand you rightly that, in your judgment, in the signature to No. 10 the ink forming the different letters, and as to each of those letters, was laid on with a single stroke, and that there are no marks or indications of retouching with the pen?

Ans. I have not examined the letters with reference to that point, and I think it might be difficult to determine whether any particular letter had been refilled by allowing more ink to flow into it than would pass out of the pen while writing. One letter in signature to No. 10 shows a very singular appearance. A in Ann shows the indication of the divergence of the two points of the pen in its upper part. If that had been filled after the letter had been made, I do not think that the difference could be noticed—that the addition could be distinguished from the original letter.

(Answer objected to by respondents as irresponsive.)

Cross-int. 15. The question I put to you referred solely to the testimony you had already given before the interrogatory was put, and was, in substance, whether you had testified or meant to testify whether in making that signature the ink had been laid on with a single stroke, without any retouching of the pen?

Ans. I do not see—I have not carefully examined the signature with reference to retouching, but I have not seen, while examining carefully each individual letter, indicating a retouch, and therefore didn't make the examination with reference to that point.

Cross-int. 16. If I now understand you rightly, you mean to say that you did not make such examination of these signatures, and particularly of No. 10, as to enable you to answer the question whether, in forming the letters of No. 10, or any of them, the ink had been laid on once or twice?

Ans. I think I can—I have made that examination. I believe that retouching letters has a specific meaning, and that from the
429 connection of the light and dark part of the signature throughout the name at the foot of No. 10, it is plain that the writing was made in continuity, and the successive letters show, and the letters show in their continuity, in the arrangement of the grains, the movement of the pen, and no distinguishable addition of ink after they were formed.

Cross-int. 17. Observe that the question that I put to you does not use the word "retouching," but inquires whether you made such examination of the signature to No. 10 as to enable you to answer the

question whether in forming the letters of the signature to No. 10, or any of them, the ink had been laid on once or twice.

Ans. I think I understand the question, and that the examination I made enables me to answer it positively. I was asked to ascertain whether the letters had been first traced with one material and afterwards traced over with other materials that might have been more or less similar or different, and examining carefully the fluid used in the writing, I saw in the signature only the indications of a flow, of one flow, of materials incompletely mixed, here and there blending, and in other places more or less separated.

Cross-int. 18. And do you mean to say that signature No. 10 has no marks or vestiges of any retouching of the pen?

Ans. I haven't seen any.

Cross-int. 19. The differences in the letters and strokes of the signatures No. 1 and 10 are obvious to the eye, are they not?

Ans. I do not fully understand that question. What is the meaning of the word "stroke"? (Counsel illustrates. Examiner then reads question again.) Yes; that is, with my spectacles.

Cross-int. 20. Were these signatures made with a steel pen?

Ans. I cannot say, positively.

Cross-int. 21. Do you observe any other place in the signatures where the points of the pen parted without shedding the ink?

Ans. No. I would only remark that the distance of the lines where they have parted is not greater than the width of some of the lines of the signatures—not even as broad as some.

Cross-int. 22. The enlarged photograph would show that, would it not?

430 Ans. I have not examined the enlarged photographs of these signatures, and can therefore not answer the question.

Cross-int. 23. In your answer to the fourth interrogatory in chief, you say that several letters in signature to No. 1 have streaks of darker material on lighter ground, which appear in No. 10. Please specify the places where such indications exist in No. 1, and then state to us what power of glass is required to distinguish them.

(The witness asks for a glass, and says he cannot do it with his eyes alone.)

Ans. With an ordinary lens, magnifying probably about three diameters—it is not mine and I do not know its power—I see them distinctly on both sides of the letter S in Sylvia; also on both arms of the letter y in the same position; also in the lower part of l; less distinctly, but yet unmistakable in the v and less so still in i and a; also slightly in the two n's of Ann; very distinctly again in H of Howland; and in the second arm of w; in the lower part of l; slightly in the first arm of a; faintly in both arms of n; and distinctly in the last stroke of d.

Cross-int. 24. Which substance expands most with the moisture and contracts most with the dryness of the atmosphere, linen or cotton?

Ans. I do not know; but I am sure it must be well known to those who have occasion to dry clothes, and are observant.

Cross-int. 25. Was this the first time that you have been called upon to make microscopic examination of a signature, for the purpose of testifying in court?

Ans. Yes.

Cross-int 26. Strike out the last clause of last question, and then answer it.

Ans. I cannot say whether I ever put — no—I examined my own signature, written over—written by several different materials, one on top of the other, in order to ascertain how far the different materials could be distinguished in superposition, before proceeding to the examination of the signatures in this case.

Cross-int. 27. Are you called upon to make nice and accurate measurements in your pursuits?

Ans. I am; but I always do it with a micrometer placed under the object, so as to have the standard—the scale—in immediate
431 contact with the object, without requiring to record the focal distance or the power in diameters, and hence the little familiarity I have in determining the magnifying powers in the usual ways.

L. AGASSIZ.

UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States appointed special examiner in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., as by a certified copy of said order hereto attached appeareth, do certify that I caused to appear before me the following-named persons, witnesses on behalf of the plaintiff in the above-entitled case, on the days set against their respective names, and all in the year of our Lord eighteen hundred and sixty-seven, to wit:

Joseph B. Spear,
Clement A. Walker,
John Quincy Adams,
Charles E. Stevens,
Samuel W. Swett,
George C. Wilde,
} All on the tenth day of April.

William W. Crapo, on the 12th and 15th days of April.

John A. Lowell, on the 13th day of April and the 2d day of May.

George H. Morse, on the 15th, 16th, and 17th days of April.

Joseph A. Willard, on the 18th, 22d, and 23d days of April.

Thomas C. Mullin, on the 20th and 22d days of April.

William H. Eaton, on the 23d, 24th, and 25th days of April.

Charles French, on the 23d, 24th, and 25th days of April.

George Pye, on the 25th and 26th days of April.

George Mathiot, on the 26th, 27th, 29th, and 30th days of April, and the first day of May.

John C. Crosman, on the 1st, 2d, 3d, 4th, 6th, 7th, 8th, and 9th days of May.

Louis Agassiz, on the 9th day of May.

432 And that the above-named witnesses having been by me severally duly sworn to testify the truth, the whole truth, and nothing but the truth relating to the cause for which their testimony was taken, the several answers of each of them to the interrogatories to them proposed, were by me reduced to writing in their presence, and by them subscribed in my presence, in the presence of the counsel of both parties, and are hereunto annexed, and that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name at the city of Boston, this ninth day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

FRANCIS W. PALFREY,
Special Examiner.

FRIDAY, *May* 10, 1867.

I, Alice Cornelia Driscoll, of Boston, in the county of Suffolk, on oath say: I was born June 24, 1804, on the place where St. Paul's church stands, so I have been told.

The examination in chief, by S. Bartlett, esq., of counsel for plaintiff, then proceeds as follows:

Int. 1. Whether or not, at any time during the last autumn, you were at the rooms of Mr. John A. Whipple, photographer, of this city, and, if so, at what time and for what purpose?

(Objected to by respondents as immaterial and as leading.)

Ans. I could not say the exact date, but I was there during the morning; I think it might have been in September; perhaps earlier. I went to examine some photographs of the American Baptist Missionary Union.

Int. 2. If you have any paper by which you can fix the date approximately, will you refer to it and refresh your memory, and do so?

Ans. On the day that I went there, in the afternoon, I selected some photographs to select from at some future time. This bill I suppose is dated on the day when I selected the photographs. I did not select the photographs on the afternoon when I had them laid aside.

433 (The witness here asks the examiner whether the date when she was first there, or the day when the photographs were selected, is desired, and the examiner reads to the witness the preceding questions and answers.)

Int. 3. I refer to the first morning you were there, as you have stated, to see photographs of the American Baptist Missionary Union.

Ans. I cannot fix the date.

Int. 4. How long was it before or after you made the final selection of the photographs, as you have stated?

Ans. I could not say definitely.

Int. 5. You are not asked to state definitely; you are asked to give your best recollection as to how long it was before you made the final selection.

Ans. It was several days after.

Int. 6. Several days after what?

(Objected to by respondents, because the witness has answered the question definitely, and because this question is leading.)

Ans. Several days after I made the selection that afternoon. It might have been more than that.

Int. 7. Do you mean that you made the selection which was laid aside for your future choice on one day, and that several days after that you made a final selection, or that you made a final selection on the same day that you first went there to see the photographs of the missionary society?

(Objected to by respondents as leading.)

Ans. I mean that I made the final selection several days after I had them first laid aside to select from.

Int. 8. Will you annex the bill of photographs selected by you on that occasion?

(Question and answer objected to by respondents as immaterial and irrelevant.)

Ans. This is the bill.

(The bill is annexed as an exhibit, and marked A[1]—R. C. P.)

Int. 9. On that first day when you went in the morning and selected the photographs, as you have stated, whether or not did you see any photographs purporting to be the signatures of Sylvia Ann Howland? If you did, state where you found them.

(Objected to by respondents as leading and assuming a fact the contrary of which is proved by the witness, and as immaterial.)

434 Ans. I did not select the photographs in the morning. (The attention of the witness being again called to the question by the examiner, the witness says, "What do you wish me to reply to?") I repeat that I have not stated that I selected the photographs in the morning. I saw among photographs of the American Baptist Union, one or more (one certainly) photographs of the name Sylvia Ann Howland.

Int. 10. What was the size; was it on a pasteboard, card, or otherwise?

(Objected to for form and as immaterial.)

Ans. Of course I cannot give the exact size. It was among the other photographs, and seemed to be on a card or pasteboard, or something of that kind.

Int. 11. Was there more than one photographed signature of Sylvia Ann Howland on a card? If more than one, how many?

(Objected to by respondents as leading and assuming a fact not proved.)

Ans. There was three.

Int. 12. Whether or not were you at that time boarding at the same house with Miss Robinson, the plaintiff in this case? If so, did you or not mention what you saw to her, and when?

(Objected to by respondents as immaterial.)

Ans. I was. I did mention it to her at the dinner table.

Int. 13. When did you next go to Mr. Whipple's photograph

rooms; who, if any one, went with you; did you at that time see any cards containing the photographic signatures of Miss Sylvia Ann Howland? If so, describe where they were, and all the circumstances.

(Objected to by respondents as immaterial.)

Ans. On the afternoon of the same day I went again. Miss Robinson, the plaintiff, went with me. I saw among the photographs of the Baptist Missionary Union the same signatures, I should think, that I saw in the morning.

Int. 14. After seeing those photographs, what else did you see and do, if anything, at those rooms? State in detail.

(Objected to by respondents, immaterial.)

Ans. Miss Robinson and I examined the photographs a while. We then walked around the room and approached a young lady who held in her hand a photograph of smaller signatures of Sylvia Ann Howland. She seemed to be painting over or coloring—or whatever it might have been—the photograph. When we stopped she
435 desisted. She held the brush in her hand. We both stood there, the plaintiff and I, and saw that she had been coloring this photograph. (The deponent here says, Please read the question again.) While we stood there some one took them away, and the remark was made —these are private. They were carried to another part of the room, and taken away; that is as far as I can state.

Int. 15. Had the young woman who held the brush in her hand, bonnet and shawl on, or was she a person apparently employed there?

(Objected to by respondents as leading and immaterial, and calling for opinion.)

Ans. She had not. Doubtless she was employed there by Mr. Whipple, or by some one.

Int. 16. Had the young woman with the brush in her hand anything by her side? If so, what? Was she sitting or standing?

(Objected to by respondents as immaterial.)

Ans. She had a vessel containing, as I thought, some coloring matter. She was sitting.

Int. 17. What was the color?

(Objected to as immaterial.)

Ans. My impression at the time was, that she was coloring the photograph with India ink, or some dark color.

(Objected to as incompetent.)

Int. 18. Were you present any part of the time, when the deposition of Mr. Southworth was being taken in this case?

(Objected to as immaterial.)

Ans. I was.

Int. 19. Whether or not was Mr. Southworth present at Mr. Whipple's rooms on the occasion you have stated?

Ans. As nearly as I can judge, I should think he was the same person who took the photographs.

Int. 20. Who made the remark, "These are private?"

(Objected to as immaterial.)

Ans. I think it might have been Mr. Southworth, but cannot say positively.

(Objected to as incompetent.)

Cross examination:

The witness is then cross-examined as follows, by B. F. Thomas, esq., of counsel for respondents.

436 Cross-int. 1. What were these photographs of the American Baptist Union that you were examining this morning?

Ans. They were photographs of the members, both ladies and gentlemen, of a large baptist society.

Cross-int. 2. On one plate or separate?

Ans. All on one plate.

Cross-int. 3. There was one plate only, then, containing photographs of different persons; was that so?

Ans. It was.

Cross-int. 4. That was what you went to see, was it?

Ans. It was.

Cross-int. 5. What was the price?

Ans. The receipted bill states the price.

Cross-int. 6. All these photographs the same price?

Ans. I suppose they were.

Cross-int. 7. All alike?

Ans. I think there were three or four different impressions taken.

Cross-int. 8. Were there three or four different impressions taken?

Ans. There were three, certainly.

Cross-int. 9. How did they differ?

Ans. I do not know that I can state very particularly, except, perhaps, the positions of some were reversed, or some were more satisfactory than others to select from.

Cross-int. 10. Were the positions reversed in some of the photographs? If so, how?

Ans. I cannot state definitely, except that some one or more persons were included in some and not in others.

Cross-int. 11. Which pleased you most, those that had most or those from which some were excluded?

Ans. I cannot say definitely, except that a lady, not included in the first one, came into one that I selected.

Cross-int. 12. Who was that?

Ans. Mrs. Charles Howard Malcom, wife of Rev. C. H. Malcom, of Newport, R. I.

Cross-int. 13. Did you find out in the morning whether she was present or absent from the picture?

437 Ans. They were my guests at the time the picture was taken, and I knew she was not included in the first one.

Cross-int. 14. So you did not mean to have the first?

Ans. Of course I did not.

Cross-int. 15. Was she in the second impression?

Ans. I think she was in both of the last impressions.

Cross-int. 16. Was she?

Ans. As nearly as I can remember she was.

Cross-int. 17. Do you recollect how the fact was?

(Objectected to for immateriality.) (Deponent says, "Must I answer all these questions?")

Ans. It seems as though I had answered the question. I think she was in both of the last impressions.

Cross-int. 18. You say "you think;" have you such recollection that you are able to swear it was so?

(Objected to as immaterial.)

Ans. I think I can bring to my recollection that her positions in the two last impressions were different.

Cross-int. 19. Was that so?

(Objected to as immaterial.)

Ans. As nearly as I can remember.

Cross-int. 20. What was the difference of positions, and which did you prefer?

(Objected to as immaterial.)

Ans. My object in selecting these was to present them to Mr. and Mrs. Malcom. I selected the one in which she stood by the side of her husband.

Cross-int. 21. What was the position she had in the other picture?

(Objected to as immaterial.)

Ans. My impression is so indistinct that I could not exactly define.

Cross-int. 22. You liked the photograph best where she was standing by her husband, did you?

(Objected to as immaterial.)

Ans. I have before distinctly said it.

Cross-int. 23. Then you didn't go down there in the afternoon to select those photographs, but went on a fishing expedition, did you not?

Ans. The photographs of the missionary union containing severa hundred, are so small that I wanted to examine them with a magnifying glass. I asked for one at Mr. Whipple's. They said they had had several, but they were all gone. I said, I have a very fine one at home, (conversation objected to by respondents as irrelevant and irresponsive,) and I will go home and bring it either this af-
438 ternoon or to-morrow and examine these photographs again. I went to select the photographs undecided whether I should finally select that day; but I wanted some laid aside.

Cross-int. 24. Now, upon your good faith, did you not go down there that afternoon and with Miss Robinson for the purpose of finding out what you could about the photographs of Miss Sylvia Ann Howland?

Ans. I have stated my object in going; I had stated to Mr. Whipple that I should return that afternoon or the next morning.

Cross-int. 25. Was Miss Robinson to aid you in determining which position of Mrs. Malcom you liked best in the photographs?

Ans. Miss Robinson had nothing to do with it; I do not remember that I mentioned her name to Miss Robinson?

Cross-int. 26. Have you given all the answer you desire to give to the twenty-fourth cross-interrogatory?

Ans. (The answer to the twenty-fourth having been read at this point to the witness, she says:) "I did not state that I told Mr. Whipple, but that I stated at Mr. Whipple's that I should call again. In order to answer the question satisfactorily to myself I shall have to enter into an explanation. When I first saw those photographs of Sylvia Ann Howland, my first and only impression in regard to them was something like this: perhaps these photographs are taken for the public to see the signatures of that contested will, and also that they were taken on Miss Robinson's side. At the dinner table of the same day I said to Miss Robinson that I had seen the photographs of these signatures. I then told her the conversation in regard to the magnifying glass, and that I was going that afternoon to examine the photographs of the Baptist Missionary Union, and asked her if she would like to go with me—she said she would like to go. I have stated the sequel.

Cross-int. 27. How many photographs did you select that afternoon?

Ans. I do not remember definitely because it was not my final selection.

Cross-int. 28. Where were those you selected put?

(Objected to as immaterial.)

Ans. In a drawer.

Cross-int. 29. Apart by themselves?

(Objected to as immaterial.)

439 Ans. There might have been other articles in the drawer. The young lady put them away. I asked her to.

Cross-int. 30. Was it the same young lady you saw using the brush?

(Objected to as immaterial.)

Ans. I do not know. I should think not.

Cross-int. 31. How long after did you go in to make the final selection?

Ans. Several days; it might have been a fortnight or more. I have no distinct recollection.

Cross-int. 32. In the mean time these copies were all reserved for you to make the final selection, were they?

(Objected to as immaterial.)

Ans. I cannot say how many I at first selected; consequently I cannot tell how many were reserved.

Cross-int. 33. Was there quite a number reserved, and when you came to examine them finally how many did you find reserved?

(Objected to as immaterial.)

Ans. I am not able to say.

Cross-int. 34. The young lady without the bonnet and shawl, and with the brush—describe her as well as you can.

Ans. I am not able to give any particular description for I never expected to hear of this matter again.

Cross-int. 35. Tall or short, old or young, how dressed?

Ans. She was sitting. My impression would be she was not very tall. As to her age I could not say anything nearer than that she might have been from 17 to 30. As to the dress I may say that I have no distinct recollection of her in any way, except as I have stated; and that is merely a general impression.

Cross-int. 36. Describe the brush she held in her hand and was using.

Ans. I did not notice it sufficiently to describe it, except that it was small, perhaps a camel's hair brush; I could not say.

Cross-int. 37. You can't give us any idea of the brush, can you?

Ans. It occurs to me now to say, that handle and all, it might have been as long as the pen held in the examiner's hand. I never thought of noticing these things particularly. I mean in regard to her personal appearance, dress, or anything relating to the brush; but I have a distinct remembrance of her holding the photograph in her hand, and of what I have before stated in regard to it.

Cross-int. 38. What was the paste or other material which she had on the brush?

Ans. I did not notice the brush with sufficient distinctness to give a reply to that, but in using the brush, as I approached her, I thought she was darkening the photograph.

Cross-int. 39. Now please observe the question, and answer directly; was she not wetting the back of the photograph, and were not the names towards you; and was not the darkening caused by the wetting of the photograph?

Ans. I saw distinctly on the face of the photograph which she held in her hand the three signatures of Sylvia Ann Howland photographed. I can't see why that don't answer it. I might add, that I don't think she was wetting the back of the photograph. I am sure as anything that I saw the face of that photograph and the three signatures.

Cross-int. 40. What sort of a vessel was that which contained the materials which she was putting on the face of the photograph?

Ans. I did not notice it with sufficient distinctness to describe it.

Cross-int. 41. Did you notice it at all?

Ans. I did; that something stood there which I thought she was using in connection with her brush.

Cross-int. 42. Can't you give us some idea of it?

Ans. I could not describe it.

Cross-int. 43. As quite a number of young ladies may be employed in Mr. Whipple's establishment, will you be kind enough to go there and ascertain which of the persons it was, if any, that you saw?

Ans. I do not know that I should recognize the person, but I would be willing to go.

Cross-int. 44. Having ascertained, if you do ascertain, the person whom you believe to be the one, will you ascertain her name or identify her in some other way?

Ans. I do not think it probable that I should recognize the person, but I will endeavor to do so. I don't see any light as to

identifying her, because I have no distinct recollection of her appearance. Still, if I saw the same person, I might recognize.

441 Cross-int. 45. Of course I need not suggest to you that you should not go with the plaintiff.

Ans. If I ought not to go with her I should not be willing to go. If Miss Robinson ought not to accompany me I should not be willing to have her. As I am so careful in all things to study to show myself approved unto God.

Cross-int. 46. When you were at Mr. Whipple's there were a number of young ladies engaged there, were there not?

Ans. There were several.

Cross-int. 47. And don't you think that you would approve yourself to God, by selecting, if you are able, the person you saw using the brush that day, that it may be more precisely ascertained what instrument and what materials she was using than your memory now enables you to state?

Ans. Yes; I do think so. As I am brought so providentially into these peculiar circumstances.

(Plaintiff's counsel objects to witness going to Mr. Whipple's establishment, inasmuch as the good faith of Mr. Whipple and his establishment is at stake in this matter, and it will subject the witness to being talked with pending this examination, and suggests to the witness and the respondents' counsel that the females employed by Mr. Whipple should be invited to attend the cross-examination of the witness, for the purpose of identification, if possible, in the presence of the magistrate.

Respondents' counsel suggests there was nothing in the testimony of the if witness she recollected anything that would put at stake the good faith of Mr. Whipple or his establishment; that the examination is now being conducted by a witness examined on the part of the plaintiff, and respondents have no power to summon the employees of a third party to be present during her examination, and that this objection is interposed after the witness had explicitly stated that she felt bound in conscience so to go; but for the purpose of avoiding any misapprehension even, we suggest that the magistrate should accompany the witness.)

Adjourned to 2¼ p. m.

442 Cross-int. 48. Have you made the examination and inquiry at Mr. Whipple's rooms that you were requested to make this morning?

(Counsel for plaintiff puts in form of advice to witness what he has heretofore stated as matter of objection under the previous interrogatory, and which is, by request, read by the examiner to witness —the word "apparently" being used at the request of said counsel before the words "at stake," and he further advises the witness to consent to adjourn her examination to any time when the defendants' counsel desire to procure the attendance before the examiner of the females connected with Mr. Whipple's establishment, in order that she may see if she can identify the person inquired about in defendants' interrogatory.

Counsel for respondents suggests that this course is entirely irregular, and the witness should be left to the fair discharge of what she deems to be her duty; and suggesting, also, that the adjournment of the examination is not a matter depending on the witness's consent or within her control, desires that the question should be put, and that the examiner should instruct the witness that it is her legal duty to disregard the advice given her by counsel for the plaintiff, and to follow the instructions of the examiner when given, and when not given her own understanding of the obligation imposed on her by her oath.

To which the plaintiff's counsel replies, that if any magistrate shall counsel a witness that the obligation of her oath requires a witness, instead of testifying, to travel, and place herself in contact with the defendants' employees for the purpose of procuring information for their benefit, when the defendants by producing those employees will enable the witness to answer the question, he thinks the magistrate will err.

The examiner, not feeling called on to intervene at the present stage of matters, or to proffer any advice, proceeds to put the question.)

Ans. I have not; and did not know that I was expected to.

Cross-int. 49. When did you first communicate to counsel what you saw at Mr. Whipple's?

Ans. I cannot tell. I did not introduce the subject. I cannot tell when it was first mentioned to me. It may have been two or three months ago or more.

Cross-int 50. Any more definite recollection than that?

Ans. I do not recollect, and cannot state definitely. I should think it might have been more than two or three months.

443 Cross-int. 51. How soon after the examination the first selection, the second selection, and the purchase of the photographs of the American Baptist Missionary Union, was it?

Ans. I cannot state the time any more definitely than I have.

Cross-int. 52. Was it last autumn?

Ans. I cannot say. It might have been.

Cross-int. 53. How many days, according to your best recollection, have you been present with Miss Robinson at the taking of depositions in her case?

Ans. As nearly as I can recollect, perhaps four or five; it may have been more.

(Respondents' counsel give notice that they will object to the use of this, as of other examinations taken by the plaintiff, where the counsel for the plaintiff—no question of the property or other interest of the witness being involved, and the answer to the question having no tendency to expose the witness to reproach or any legal penalty—has sought by his own advice and direction, and not under the direction or by the mouth of the magistrate, to limit the answers of witnesses to questions put or the reasonable investigation and inquiry which would enable them to make more full and perfect answers to questions deemed by counsel for defendants important to the cause and in themselves important to the interests of justice.)

ALICE O. DRISCOLL.

Exhibit A'—Referred to.

Boston, Oct 13 1866

Mrs. A C Driscoll

To JOHN A. WHIPPLE, Dr.

INDISTINCT DAGUERREOTYPES AND AMBROTYPES COPIED AS PHOTOGRAPHS.

Life Size, Finished as Crayons, or Colored in Oil, equal to the finest Portraits, the surest method of obtaining a Perfect Likeness.

Terms Cash. No. 297 WASHINGTON STREET.

To 2 of the Bapt M U 6.00

Paid

J A WHIPPLE
per N M Y

444 FRIDAY, *May* 10, 1867.

I, Francis Bartlett, of Boston, in the county of Suffolk, aged thirty years, counsellor at law, on oath say, that I have acted as one of the counsel in this case for the plaintiff.

Before the examination of Messrs Eaton, French, Pye, Mullin, Lowell, and Mathiot, (except in the case of Mr. Lowell, to whom I did not show the signatures of Samuel W. Swett,) I exhibited the following signatures and writings, marked respectively as follows, viz:

The signatures Sylvia "Ann Howland" to the three papers marked F. W. P., and numbered respectively, 1, 10, and 15, and the enlarged photographs of the same in the pocket attached to the cover of the large book marked R. vs. M., F. W. P., marked respectively F. W. P., Photograph A, F. W. P., Rider A.

Also the signatures "J. Q. Adams" to papers marked Adams, F. W. P., and numbered respectively 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101.

Also the signatures "C. A. Walker" to the papers marked Walker, F. W. P., and numbered respectively 623, 633, 555, 579, 575, 623a, 656, 679, 670, 669, 582.

Also the signatures "Joseph B. Spear" and the words "Very respectfully, Your obedient servant," immediately over and preceding said signature in the papers marked Spear, F. W. P., and numbered respectively 45, 10, 5, 6, 8, 20, 24, 26, 27, 29, 33, 34, 35, 39, 40, 41, 43, 44, 48, 49, 52, 54.

Also the signatures "Stephen Fairbank" to the paper marked Fairbanks, Dividend 41, F. W. P., and papers marked Fairbanks, F. W. P., and numbered respectively 205, 114, 272, 311, 312, 370, 422, 706, 740, 747, 619, 1423, 2191, 1660, 355, 2303, 2365, 822, 843, 1347, 1583, 1682, 1837, 1838, 2021, 2061, 1860, 2150, 2074.

Also the signatures "Saml. W. Swett" to papers marked Swett, F. W. P., and numbered respectively 36, 30, 46, 34, 41, 35, 39, 37, 12, 38, 152, 143, 29, 144, 57, 127, 48.

Also the signatures "F. W. Palfrey" to papers marked Palfrey, W. S. D., and numbered respectively 285, 282, 279, 277, 274, 271, 265, 270, 260, 246, 238, 226, 218, 216, 214, 206, 174, 171, 170, 163, 159.

Also the signatures "Geo. C. Wilde" to papers marked
445 Wilde, F. W. P., and numbered respectively 11, 60, 59, 56, 52, 44, 35, 29, 27, 25, 19, 17, 14, 13, 8, 6, 5, 4, 3, 1.

Also the papers marked R. C. P., 1 to 51.

I did not show any other signatures purporting to be original signatures except those above described.

I furnished John C. Crosman with about fifty copies, with riders not made transparent, of the group of three signatures Sylvia Ann Howland, both in small and large size. These I received from Mr. Albert S. Southworth. I mean fifty of each—making in all about two hundred photographs of signatures.

About the last of March I went to Mr. Southworth's establishment and asked him if he could furnish me with fifty copies with riders of the two groups of the three Sylvia Ann Howland signatures, as they appeared in the small books filed by the respondents as exhibits. He produced a small book apparently similar to those, and I pointed out the groups of photographs I wanted. He said that he would consult the counsel for respondents, and sometime afterwards brought the photographs to me which I furnished to Mr. Crosman; and I furnished him no others. None of these photographs were mounted, and none of the riders made transparent. Such being my directions.

FRANCIS BARTLETT.

Deposition of Joseph B. Spear.

Joseph B. Spear, of the city of Boston, aged thirty-eight years, being duly sworn, testifies as follows: I have been with John A. Andrew, esq., late governor of the commonwealth of Massachusetts, as clerk or secretary, for about eleven years last past. In the month of December 1866, I think it was, I issued circulars to the legal profession, offering my services as a copyist. I sent one of them to Mr. Sidney Bartlett. I was thereupon requested by him to furnish him with more copies of them. No object of the request was explained to me. I knew nothing whatever about it.

Int. 1. Did you thereupon furnish the documents now shown
446 you marked Spear 45, F. W. P.; Spear 10, F. W. P.; Spear 5, F. W. P.; Spear 6, F. W. P.; Spear 8, F. W. P.; Spear 20, F. W. P.; Spear 24, F. W. P.; Spear 26, F. W. P.; Spear 27, F. W. P.; Spear 29, F. W. P.; Spear 33, F. W. P.; Spear 34, F. W. P.; Spear 35, F. W. P.; Spear 39, F. W. P.; Spear 40, F. W. P.; Spear 41, F. W. P.; Spear 43, F. W. P.; Spear 44, F. W. P.; Spear 48, F. W. P.; Spear 49, F. W. P.; Spear 52, F. W. P.; Spear 54, F. W. P.? And are they, all parts of them, including the signature, in your handwriting?

(Objected to as incompetent and immaterial.)

Ans. I did furnish them. They are all in my handwriting, all parts of them, including the signatures.

Cross-examination:

I have been engaged with Governor Andrew, as clerk and copyist, for about eleven years. I am with him now. I originally produced

to Mr. Sidney Bartlett fifty such papers as those I have identified. They were prepared by me at his request. The one I sent to Mr. Bartlett, originally was all printed, except the signature. I think they were prepared about January. I won't be positive about the day. I did not assist at all in the selection of the papers produced to-day from the fifty I handed to Mr. Bartlett. I have never seen the papers since I placed them in Mr. Bartlett's hands till to-day. These were copies, one from the other. I was not requested to make them as nearly alike as possible. I did not intend in making these copies to make them as nearly alike as possible. I wrote them right along in my ordinary handwriting. I could write five thousand copies just the same. I couldn't write any differently, at any rate. I know nothing about the pencil-marks nor the bits of yellowish paper on these papers. The papers were not folded at all when I handed them to Mr. Bartlett. They were laid out flat, in half-sheets. The fifty were not all written in one day. I think I was two or three days in writing them. I did not write them all immediately right off. I don't think I could write one any different from this. At any rate, I didn't try to write these any different from my ordinary handwriting. I could not fix the dates when these papers were writen. nor the days between which they were written. My printed circulars were printed "Boston, 1866," and I followed that date in these papers.
447 There was no particular motive for so doing. The original one hundred and fifty were not lithographed, but printed—not fac-simile printing, but ordinary print—all but the signatures, which I wrote myself. I think those I gave Mr. Bartlett were all the copies I wrote. I have no recollection of writing any more.

Re-examination:

Int. 1. Was any other request made of you than to furnish fifty copies of your circular?

(Objected to for form and substance, and as not re-examination upon any matter opened by defendants in cross-examination. Thereupon plaintiff withdraws the question and substitutes the following:)

Int. 1. Will you state the request made of you by Mr. Bartlett, and all the request made by him?

(Objected to as above.)

Ans. Mr. Bartlett requested me to furnish him with fifty copies of my circular. That, I believe, was all the conversation I had with him on the subject. I have no recollection of anything else. I had no conversation with any one else on the subject of furnishing these copies.

JOSEPH B. SPEAR.

Deposition of Clement A. Walker.

Clement A. Walker, of South Boston, aged forty-six years, being duly sworn, testifies as follows:

I am superintendent of the lunatic hospital.

Int. 1. Will you look at the documents now shown you, marked Walker F. W. P., and numbered respectively 623, 633, 555, 579, 575, 623a,

656, 679, 670, 669, 582, and say whether or not the manuscript part of each of them, including the signature, is in your handwriting, and whether or not each of them were written by you in the course of your duties as superintendent of the lunatic hospital, at the periods at which they bear date?

(Objected to, form and substance. Question withdrawn, in consequence of objection to form, and the following substituted:)

Int. 1. State, if you know, in whose handwriting the written part of the documents mentioned in the last interrogatory, including the signature, is?

448

(Objected to, substance.)

Ans. The manuscript in ink in these several documents, including my signature, is all in my handwriting except the signatures of Osmyn Brewster and George A. Curtis. There is a lot of pencil manuscript there which I am not responsible for.

Int. 2. Were they made in the course of any employment, and what, and at what dates?

Ans. They were made in the discharge of my official duty as superintendent of the hospital, and at the several dates borne on the respective documents.

Cross-examination:

I have been superintendent of the lunatic hospital nearly sixteen years. For about eight years—I think eight years only in this precise form—it has been my daily habit to write receipts and requisitions in the forms of these documents, or at any rate to sign them. I speak of the general rule. If I have been away, or out of town, of course my assistant has done it in my place. These papers are made in books, and made and preserved in duplicate; one set kept at the hospital, and the other, the duplicates, forwarded to the office of the board of directors of public institutions, and preserved there in a book or books. I couldn't tell how many books there were. I should say about a dozen, without meaning to be accurate. I have the custody of one set of these books, the directors of public institutions have the custody of the other. The papers produced here were taken from the books in the custody of the board of directors.

Cross-int. 1. In whose personal custody are those books that are in the general custody of the board of directors?

Ans. In the personal custody of William Willett, clerk to board of directors, so far as my knowledge goes.

Cross-int. 2. From how many of these books in the custody of Mr. Willett were these documents produced here taken?

Ans. I can't answer that, because I don't know; I was not present when these documents were taken from the books, and know nothing about it, these were all taken from the director's set; mine are bound in, theirs are pasted in.

449

Cross-int. 3. How long have you written that hand, and do you recollect the time when you wrote otherwise?

Ans. When in college, in 1839 and 1840, I wrote a very bad hand. It had been spoiled by a travelling writing master. A letter written

by a Boston merchant in the old round mercantile hand fell into my hands and I copied it, I suppose, five hundred or a thousand times. I copied it whenever I had an opportunity, and I suppose that laid the foundation of my present hand; I can't say just when it assumed its present shape.

Cross-int. 4. From such repeated copying you formed your present hand, did you?

Ans. Yes, sir; it isn't much like the original, as I recollect the original.

Cross-int. 5. Do you use a quill?

Ans. I do.

Cross-int. 6. And that remarkable handwriting is the source of wonder and admiration to all your professional friends isn't it, as well as to your other numerous friends?

(Objected to as assuming a fact not proved.)

Ans. It is the cause of frequent remark, not always of admiration. Dr. Bowditch, Henry I. Bowditch, says it's the worst handwriting he ever saw, and that he can't read a word of it.

CLEMENT A. WALKER.

At the request of counsel for defendants, and with the assent of counsel for plaintiff, the magistrate notes that this signature was made with a quill.

FRANCIS W. PALFREY,
Special Examiner.

Deposition of John Quincy Adams.

John Quincy Adams, of Quincy, Massachusetts, esquire, being of the age of thirty-three years, being duly sworn, testifies as follows: I am the son of Mr. Charles Francis Adams, and the grandson of John Quincy Adams.

450 Int. 1. Where were the checks now shown you, marked Adams, F. W. P., and numbered respectively 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101, found, if you know, and in whose handwriting are they, if you know?

(Objected to for substance, and because it does not appear from previous examination, that he saw the papers signed by the person by whom they purport to be signed, or is otherwise qualified to give an opinion on that point, under any rule of law.)

Ans. They were found in a chest, standing in a room in the dwelling-house occupied by my grandfather, at Quincy, the room being the one which he always occupied as his study in his lifetime. They are in the handwriting of Mr. John Quincy Adams.

Int. 2. When were they found, and did you deliver them to any person, and to whom?

Ans. My impression is that it was in January I found them—January last—and I delivered them to Mr. Bartlett. I searched for them at his request.

Cross-examination:

I did not see Mr. Adams sign these checks. I never saw the checks before. I found them in that chest. These are not all the checks I found there.

Cross-int. 1. Whether were the checks in files, according to the year, or how kept?

Ans. They were found in small parcels, surrounded by a slip, apparently as returned from the bank, and parcelled in paper wrappers, in quantities containing one or more bundles—one or more slips, you might say--it amounts to the same thing—generally with the time they covered dated on the cover or wrapper.

Cross-int. 2. State as accurately as you can about how many years these checks covered that were there.

Ans. I made no careful examination of the checks but a vague impression rests upon my mind that there were dates as early as 1820, and from that down to near the date of his death, say 1847. He died in Washington.

Cross-int. 3. Whether did you give to Mr. Bartlett all the checks found in the chest, or only those exhibited here, or what the fact was?

451 Ans. I did not give to Mr. Bartlett all the checks found in the chest, nor only those exhibited here. I selected from a very large number, a few bundles, a few envelopes—perhaps eight or ten. I am unable to say how many checks these bundles contained. I didn't count them.

Cross-int. 4. What, if anything, guided you in selecting the envelopes you took out?

Ans. Nothing, sir; I took them at hap-hazard.

Cross-int. 5. Did Mr. Adams, or not, in the latter part of his life use a stamp for his signature?

Ans. I am very confident that he never used a stamp for his signature in his life. I know that, because he had a conscientious objection to it. He never regarded it as a signature. You couldn't persuade him that it was.

Cross-int. 6. When you say that these checks are in the handwriting of your grandfather, that is an opinion formed from the observation of his writing, isn't it?

Ans. Certainly, in a measure; but very largely from the fact that I have watched him write for hours—for many hours, during my life.

Cross-int. 7. He died in 1848, did he not?

Ans. Yes.

Cross-int. 8. What was your age when he died?

Ans. Not quite thirteen. He went away in the fall, and I didn't see him again for six months till he died.

Re-examination:

Int. 1. You say you have seen him write for hours; have you seen him make his signature?

Ans. Very frequently.

Int. 2. When you say the checks are in his handwriting, you mean to include the signatures?

Ans. Certainly, sir; all the written part of the checks is in his handwriting; much of the checks is printed.

Re-cross-examination:

Cross-int. 1. How did the signatues made by your grandfather, within your recollection, compare with that on paper 101, now shown you?

452 Ans. Paper 101 at first glance seems to show a slight variety from that of my personal recollection, but to me appears substantially the same. The alteration, if any, in Mr. Adams's signature in later years, arose from an increased trembling of his hand, to which he was somewhat subject from very early life.

Cross-int. 2. Where are the other checks you gave Mr. Bartlett, besides those identified here?

Ans. I can only conjecture; I haven't seen them since.

JOHN Q. ADAMS.

Deposition of Charles E. Stevens.

Charles E. Stevens, of the city of Boston, aged thirty-four years, being duly sworn, testifies as follows:

I am treasurer of the Western railroad. My predecessor in that office was the late Stephen Fairbanks. I was with him as clerk for between thirteen and fourteen years before his death. I have seen Mr. Stephen Fairbanks sign his name a great many times; I suppose thousands of times.

Int. 1. Will you look at the checks now shown you, marked Fairbanks, Dividend 41, F. W. P., and numbered and marked Fairbanks, F. W. P., 205, 114, 272, 311, 312, 370, 422, 706, 740, 747, 619, 1423, 2191, 1660, 355, 2203, 2365, 822, 843, 1347, 1583, 1682, 1837, 1838, 2021, 2061, 1860, 2150, 2074, and state by whom they were signed?

(Question objected to as not calling for knowledge of witness.)

Ans. I have seen the checks. They were all signed by the late Stephen Fairbanks.

Int. 2. How do you know that fact?

Ans. From my familiarity with his signature, and the fact of my having seen him sign it so many times.

Int. 3. If you know where those checks were found, and when, and to whom they were delivered, will you state?

Ans. They were found in the Western railroad office, as near as I remember, in the month of December last. They were delivered to Mr. Bartlett by me.

453 Cross-examination:

I am not positive about these identical checks, whether I saw Mr. Fairbanks sign them. I shouldn't want to say I saw him sign them. I couldn't say how many I gave to Mr. Bartlett—I didn't count them. I should think it might be about twenty that I gave Mr. Bartlett, in a little package. I put my hand in to a large quantity of checks, and

took out the first package it rested on. I always considered Mr. Fairbanks's signatures remarkable, from their resemblance one to another. It was frequently remarked upon. Mr. Fairbanks died in September, 1866—the 10th. He was eighty-two years and seven months old when he died. Up to the last year of his life he was a vigorous man for his age—quite remarkable. Besides the package of checks I have testified I gave to Mr. Bartlett, I gave him another package afterwards. Mr. Fairbanks had been treasurer of the Western railroad about eighteen years; as treasurer he was accustomed to write a great deal, and to sign his name very frequently. He always signed the dividend checks, in fact all checks, except checks for interest on bonds.

Re-examination:

Int. 1. When you say he wrote a great deal, did he write anything besides his signature, and what?

Ans. The latter part of the time of his administration, say for two years, he did not attend much to the correspondence of the office—for that time, he wrote very little, except his signature, and some particular letters, which were matters of form, and about the same from day to day. Previous to that time, he wrote the correspondence. That's about all the business of the office that he attended to, and all that would naturally come to an officer situated as he was, an old man, with a clerk who had been with him many years. He always attended to the financial part of the business—I kept the books.

Cross-examination resumed:

I have not seen the last package of checks that I gave to Mr. Bartlett since I gave it to him. They were of the same date.

CHAS. E. STEVENS.

454 *Deposition of Samuel W. Swett.*

Samuel W. Swett, of Jamaica Plain, Massachusetts, aged sixty-two years, being duly sworn, testifies as follows: I am president of the Suffolk National Bank, of Boston.

Int. 1. Will you look at the checks now shown you, marked Swett, F. W. P., and numbered respectively 36, 30, 46, 34, 41, 35, 39, 37, 12, 38, 152, 143, 29, 144, 57, 127, 48, and say by whom they are signed, if you know, and at what dates?

Ans. These checks, numbered as you have read, are checks signed by myself—that I drew in the course of my business at the various dates that appear upon them.

Cross-examination:

They are filled up by myself also—all of them. The remarkable uniformity of my signatures has been remarked upon. When I was in the National office, I had occasion to sign a great many policies of insurance. It has been the subject of frequent remark. I write with a steel pen. I don't think I have used a quill for several years. I don't know of any case of as remarkable uniformity of signature as

mine among my business friends. I didn't know that the uniformity of mine was remarkable. I should think that if a man was signing his name a good many times a day, his signature would become very uniform. The signature of the cashier of the Suffolk Bank is quite uniform. Before I was president of the bank, I was president of an insurance company, and so in the habit of signing my name frequently, a good many times a day. I suppose this uniformity in my signature arises from my signing my name so frequently. I can't say whether the marked and numbered checks produced here to-day are all I gave Mr. Bartlett. My impression is, I gave him more, taken from different packages—because some that were payable to order I didn't want to part with. These checks were written in the Suffolk Bank. I have been there a little more than one year.

At the request of counsel for defendants, I now write my name here. I suppose the similarity of signatures depends somewhat on circumstances, as sitting at the same desk.

SAML. W. SWETT.

455 I can't tell what became of the other checks I gave Mr. Bartlett, if I gave him any. I have had no occasion to compare my signature as made in the latter part of 1866, with my signature made three or four years ago. Signatures as president of Suffolk Bank, when bills are issued, are always signed. I have had no occasion to sign any since I became president. All were issued before that.

SAML W. SWETT.

Deposition of George C. Wilde.

George C. Wilde, of the city of Boston, aged sixty-six years, being duly sworn, testifies as follows:

I am clerk of the supreme judicial court of the commonwealth of Massachusetts.

Int. 1. Will you look at the papers now shown you, marked Wilde, F. W. P., and numbered respectively 11, 60, 59, 56, 52, 44, 35, 29, 27, 25, 19, 17, 14, 13, 8, 6, 5, 4, 3, 1, and state by whom they are signed, and whether or not they were signed by you in the course of your business as clerk?

Ans. They were signed by me in the course of my business as clerk. They were signed at nobody's request, but taken out from the signed blanks in the office, as any one takes out signed blanks.

Cross-examination:

I am unable to fix the time when these signatures were made, but I have no doubt they were made within, say the last two years. Possibly some of them a longer time, as some of them may have been remaining in Mr. Bartlett's office from some previous purchase. I never sign a great many blanks at a time. It's a thing I don't like to do. I have no doubt the memorandum or minute on the outside of some of these papers was made by me at the request of Mr. Bartlett at the day of the date thereof.

Cross-int. 1. Whether or not the uniformity of your signature has been matter of remark and comment to you?

Ans. It has, frequently, by different persons, at different
456 times, during my official life; for a good many years, occasionally. I have been clerk between thirty-three and thirty-four years. For the latter half of that time, I should say, the uniformity of my signature has been the subject of occasional remark. The only person whom I remember as noticing it particularly, was, I think, Mr. Bartlett, at the time I made the minutes on the outside of these papers.

(Narr. resumed.) I have had no occasion to compare my official signature with my signature to letters and others papers. I should think the uniformity of my signature has increased for the last ten or fifteen years—though always having written with difficulty, I have written with care.

GEO. C. WILDE.

United States circuit court, Massachusetts district.

HETTY H. ROBINSON
vs.
THOMAS MANDELL *et als.* } In equity.

It is agreed that the deposition of Francis W. Palfrey, esquire, the special examiner appointed by the court in this cause, be taken before William S. Dexter, esquire, a justice of the peace for the county of Suffolk and commonwealth of Massachusetts.

T. D. ELIOT,
For Respondents.
S. BARTLETT,
For Plaintiff.

Deposition of Francis W. Palfrey, esq., examined before William S. Dexter, esq., April 12th, A. D. 1867, *on behalf of plaintiff.*

I, Francis W. Palfrey, of Boston, in the county of Suffolk and commonwealth of Massachusetts, counsellor at law, aged thirty-six years and upwards, on oath, depose and say:

I have examined the cheques herewith exhibited, and
457 marked "Palfrey, W. S. D.," and numbered respectively 285, 282, 279, 277, 274, 271, 270, 265, 260, 246, 238, 226, 218, 216, 214, 206, 174, 171, 170, 163, 159, all dated in the year 1866. These cheques were all drawn by me in the usual course of my business, and all signed by me.

Cross-examination on behalf of defendant:

Cross-int. 1. Please state how long you have been special examiner in this cause, and for which party.

Ans. Eight months, and I suppose more. For the plaintiff.

Cross-int. 2. State, if you please, what is your relationship, if any, to the senior counsel for the plaintiff.

Ans. I am son-in-law to Mr. Sidney Bartlett, one of the counsel for the plaintiff.

Cross-int. 3. At what time were the cheques produced and verified

by you, delivered to Mr. Bartlett, if at all—and how many were so given to him?

Ans. I have a very imperfect recollection of the time, but should say that it was probably some time last autumn that I delivered to Mr. Francis Bartlett, a box containing all my cancelled checks for a period of some years. I find, upon looking at the contents of the box, that there were considerably over one thousand of the cheques.

Cross-int. 4. After the cheques here verified were given to Mr. Bartlett, when did you next see them?

Ans. I do not think I ever saw any of them until the day before yesterday.

Cross-int. 5. State, if you please, whether you have examined these cheques so carefully that you are able to verify them, except from the fact that you see your signature on them.

Ans. I have.

Cross-int. 6. Please state how.

Ans. In the first place, by the fact that the word National appears in my handwriting, written diagonally across and between the words Columbian and Bank, at the top of each cheque. In the second place, because the spaces for the amounts of the cheques in dollars and cents, left after writing in the numerals and letters, are filled in the different ways which I recognize as my own. In the third
458 place, because I remember the names of the payees as they appear on many of the cheques. In the fourth place, because the figure 7 has a short pen-mark across the tail of it, which has been my method of making that figure for many years; and because the two-cent revenue stamp is affixed to many of the cheques in the place and manner habitual to me, and cancelled in the manner habitual to me; and there are other marks which enable me to identify them, which I can state if desired.

Cross-int. 7. Have you seen any photographs or pictures of these cheques since you gave the originals to Mr. Bartlett?

Ans. I have seen a few photographs, which looked as I should think photographs of my cheques would look. I do not think I have seen photographic copies or enlargements, or what purported to be such, of more than a small number of the cheques produced to-day.

Cross-int. 8. State, as nearly as you recollect, at what time you first saw them.

Ans. I should think it might have been since the first of January last. I cannot state any more precisely than that, and I am by no means certain that I am right in saying so much as that.

Cross-int. 9. When you saw them, were they of your cheques alone, or were there other photographs with them?

Ans. My impression is that what I saw were pasteboards of some size, each containing photographic copies of several of my cheques, arranged as cheques are in a cheque-book. I have seen other photographs, but in no sense with those I have spoken of, so far as I remember, further than that they were on the same table or desk.

Cross-int. 10. The inquiry only related to photographs taken in connection with this case. Please answer, in that view.

Ans. I did so answer. I have seen photographic work, from time to time, all of which I presumed, and a little of which I was told, was connected with this case; but I have never had other than very slight knowledge of the photographic part of this case—derived from my presence, either by chance or on account of other business, in places where the work was attended to, and from occasional conversation. When I say the places where the work was attended to, I mean Mr. Bartlett's three offices. I think I also once saw some of this photographic work at his house in Boston.

459 Further direct examination on behalf of plaintiff:

Int. 1. Will you state within what dates the cheques verified by you and marked "Palfrey, W. S. D.," are embraced?

(Objected to for form and substance.)

Ans. Within a period commencing January 5, A. D. 1866, and ending July 27th, in the same year.

Further cross-examination on behalf of defendant:

Cross-int. 11. Do you know Mr. J. B. Spear, and have you ever seen him in Mr. Bartlett's office?

Ans. I took his deposition in Mr. Bartlett's office the day before yesterday. I do not think I ever saw him there at any other time. I knew him slightly, during the war, as one of the governer's attachés. I have no other acquaintance with him. It is possible that I may have seen him in Mr. Bartlett's office at some other time, but I do not recollect it.

FRANCIS W. PALFREY.

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

I certify that the above-named Francis W. Palfrey did, on the twelfth day of April, A. D. eighteen hundred and sixty-seven, personally appear before me at Boston, in the county of Suffolk, and commonwealth of Massachusetts, and was by me then and there carefully examined, cautioned, and sworn to testify the whole truth, and did then and there give the foregoing deposition by me reduced to writing in his presence, and then read over to him, and then by him subscribed in my presence. The said deposition was taken by me at the request of Hetty H. Robinson, to be used in a suit in equity, now pending in the circuit court of the United States for the first circuit and district aforesaid, between her and Thomas Mandell et al., and was taken in pursuance of the agreement of counsel hereto annexed, and made at the time of taking said deposition. And
460 the adverse parties were present by their counsel, Hon. Benjamin F. Thomas and Hon. Thomas D. Eliot, and put to the deponent the interrogatories herewith returned. Wherefore I make return to the court aforesaid of the said deposition, together with this certificate.

WM. S. DEXTER,
Justice of the Peace for the County of Suffolk and Commonwealth of Massachusetts.

461 *Agreement.*

It is agreed that previous to the taking of the deposition of George H. Morse, by the plaintiff in this case, the witness was shown by David Thaxter, esq., one of the plaintiff's counsel, the signatures "Sylvia Ann Howland" to the three papers marked F. W. P., and numbered respectively 1, 10, and 15. Also, the signatures "J. Q. Adams" to papers marked Adams, F. W. P., and numbered respectively 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101. Also, the signatures "C. A. Walker" to the papers marked Walker, F. W. P., and numbered respectively 623, 633, 555, 579, 575, 623a, 656, 679, 670, 669, 582. Also, the signatures "Joseph B. Spear," and the words "Very respectfully, Your obedient servant," immediately over and preceding said signature, in the papers marked Spear, F. W. P., and numbered respectively 45, 10, 5, 6, 8, 20, 24, 26, 27, 29, 33, 34, 35, 39, 40, 41, 43, 44, 48, 49, 52, 54. Also, the signatures "Stephen Fairbanks" to the paper marked Fairbanks, Dividend 41, F. W. P., and papers marked Fairbanks, F. W. P., and numbered respectively 205, 114, 272, 311, 312, 370, 422, 706, 740, 747, 619, 1423, 2191, 1660, 355, 2303, 2365, 822, 843, 1347, 1583, 1682, 1837, 1838, 2021, 2061, 1860, 2150, 2074. Also, the signatures "Sam'l W. Swett" to papers marked Swett, F. W. P., and numbered respectively 36, 30, 46, 34, 41, 35, 39, 37, 12, 38, 152, 143, 29, 144, 57, 127, 48. Also, the signatures "F. W. Palfrey" to papers marked Palfrey, W. S. D., and numbered respectively 285, 282, 279, 277, 274, 271, 265, 270, 260, 246, 238, 226, 218, 216, 214, 206, 174, 171, 170, 163, 159. Also, the signatures "Geo. C. Wilde" to papers marked Wilde, F. W. P., and numbered respectively 11, 60, 59, 56, 52, 44, 35, 29, 27 25, 19, 17, 14, 13, 8, 6, 5, 4, 3, 1. Also, the signatures "Sylvia Ann Howland" to the papers marked R. C. P., and numbered respectively 1 to 51 inclusive, except 31; and that Mr. Thaxter exhibited to said witness no other signatures purporting to be original except those above stated.

T. M. STETSON,
For Defendants.
S. BARTLETT,
For Plaintiff.

462 MAY 27, 1867—12 m.

Deposition of John A. Whipple.

John A. Whipple, of Cambridge, near Boston, aged forty-four years, being duly sworn, testifies as follows:

Int. 1. Have you, and have you brought with you, the photographic negative, so called, which you were directed by the subpœna served on you as a witness to bring here, to wit, the photographic negative, so called, made by you at the request of A. S. Southworth, and having upon its surface a representation of engine-divided scales, or portions of scales, being the negative of the scales photographed

by you for said Southworth, to be used as evidence in this cause, and which was at the office of the Honorable B. F. Thomas, May 14, 1867, and will you produce the same, and leave it with the examiner for a day or two, that it may be examined by plaintiff's witnesses?

Ans. I brought the negative here with me, but I should object to having it go out of my hands. It's against my plan ever to let negatives go out of my hands. They are very apt to get scratched or damaged.

Int. 2. What do you mean by letting it go out of your hands?

Ans. I mean its being taken out of my possession and sight.

Int. 3. You have permitted it to go out of your possession and sight at the request of respondents' counsel, have you not?

Ans. I let Mr. Southworth take it.

Int. 4. Will you attend here before the examiner this afternoon and to-morrow forenoon, so that the said negative may be examined by the witnesses for the plaintiff?

Ans. How much of the forenoon to-morrow shall you want?

Int. 5. Several hours.

Ans. I will this afternoon. I couldn't tell what my engagements are to-morrow at my rooms.

Int. 6. You understand, do you not, that your fees as a witness will be paid for each day of attendance?

Ans. Yes. I do that; but when I have engagements made the week beforehand, I can hardly leave them, without great disappointment and damage.

463 Int. 7. As you are under subpœna as a witness, and, as your business engagements afford no reason for not answering, and as the witnesses for the plaintiff are bound to attend at appointed times, I must repeat the question, will you attend to-morrow morning as requested?

(Counsel for respondents requests the examiner to instruct the witness that, if it is for the purpose of taking his deposition or producing the negative to enable other witnesses to testify, he ought so to do; but if it is only for the purpose of preliminary examination, he is not under legal obligation, in consequence of his subpœna, so to do, but that he is desired by counsel for respondents to furnish all reasonable facilities to counsel for plaintiff for such examination. Counsel for respondents objects to the question as tending, though not so intended, to mislead the witness as to his legal duty. Counsel for plaintiff asks the examiner to instruct the witness that, as he has already placed the negative in the hands of defendants' counsel and agent, without being himself present in person, it is his duty to afford the like facilities to the plaintiff by depositing the negative in the charge and custody of the examiner, that it may be examined by plaintiffs' witnesses in the presence of the examiner, at such reasonable times as the plaintiff shall be able to collect his witnesses, and further requests the examiner, if he has doubts upon this question, to apply to the court for instructions. Counsel for respondents object to the request for instruction to the witness as assuming fact

not proved. And now the counsel for the respondents, while they disclaim any relation to said negative, and state that they and their clients have employed Mr. Whipple to furnish certain photographs without having any control over his tools, fluids, or means of making them, yet, in order that every facility in hastening the progress of this cause may be had, join in requesting Mr. Whipple to place in the examiner's hands the negative in question. The witness says, "I'll do it." Thereupon the requests for rulings are withdrawn, and the putting the question waived.)

Cross-examination:

Cross-int. 1. For what length of time have you carried on the business of photography in this city?

(Objected to as not being cross-examination on the subject-matter of the direct examination, and as being in violation of the direction of the court in that regard. Respondents suggest that the objection assumes inaccurately that any direction was given by the court upon the subject.)

464 Ans. I commenced experimenting in 1844, and in 1851 it was a sucessful business. Since then I have practised it with all my force and power.

Cross-int. 2. Please to state with what care and accuracy the photographs which you furnished Mr. Southworth for the respondents in this cause were made, and what lens you used in making them, and whether said lens is in your judgment an accurate and correct instrument for the purpose or not.

(Objected to for reasons above.)

Ans. They were made with the greatest care and accuracy—the very greatest care and accuracy. I used a five-inch Voigtlander portrait combination. I think it's as good an instrument as could be used for the purpose.

(Now the counsel for the respondents, upon the objection as made above by the counsel for the plaintiff, do not further continue the examination.)

JOHN A. WHIPPLE.

MAY 28, 1867—2 p. m.

Deposition of Frank Rowell.

Frank Rowell, of Boston, aged thirty-six years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that the examination of the witness is made de bene esse, without waiving any objection to the testimony offered by the respondents in respect to the genuineness of the signature Sylvia Ann Howland to the papers produced in this cause marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

I am a photographer, and have practised that profession for thirteen or fourteen years. For all of that time, except four years and

three months, in Boston. I am now practising that profession at 25 Winter street, Boston.

Int. 1. In your practice of your art, what lenses have you employed?

Ans. I have used the French lens, the German lens, the
465 Dallmayer, and the Voigtlander; the former an English, the latter a German lens. Also an American lens, by Harrison, the globe lens. I think that's all the lens that I have used. The Harrison lens—there's another name combined with Harrison in making the globe lens, but I don't recollect what it is.

Int. 2. State, if you know, what are the characteristics of the Voigtlander lens, and for what purpose it is used.

(Objected to as immaterial, and no acquaintance of the witness being shown with any Voigtlander lens used in this case.)

Ans. The Voigtlander lens that I have used is a portrait lens, for making portraits. It is made for the purpose, for that purpose, and consequently is made to admit a large amount of light. A large aperture, I think they call it. The centre, the central portion of the lens is where we usually focus for a head, for getting a head—sharp—in focus, sharp. That's the term we use. The outside part of the plate would be out of focus, the background, or the outside part of the plate—that would include the background. I think that is, if I recollect, all I can give you on the subject.

Int. 3. What are the characteristics, if you know, of the globe lens, and for what purpose is it used?

(Objected to as immaterial.)

Ans. I use it for copying anything that requires accuracy of lines. The characteristics, as I understand it, the shape to be such that it will give accurate lines without regard to definition. To give definition, we simply diaphragm it, diaphragm the lens. In definition I mean sharpness.

Int. 4. Whether or not, for accurate line-work, you employ, and if not why not, the Voigtlander lens?

(Objected to as immaterial.)

Ans. I do not employ the Voigtlander for accurate line-work, for it distorts at the outer edges.

(Answer objected to by respondents as showing only the practice of the witness and not the general usage, and therefore incompetent.)

Int. 5. State, if you know, what reputation, if any, the Voigtlander instrument has or has not for accuracy in line-work, with your profession.

(Objected to as immaterial and incompetent.)

Ans. As a copying lens I should say that it had not a good reputation for line-work. For portrait work it has a good reputation.

466 Int. 6. Whether or not the Voigtlander lens, as a portrait lens, works with more or less rapidity than the globe lens?

Ans. (Objected to as above.) With more rapidity than the globe lens.

Int. 7. In making large line-work, what lens do you use?

(Objected to as before.)

Ans. I use the globe lens. I have used Mr. Black's globe lens; I think his initial are J. W. I mean Mr. Black, of Boston.

Int. 8. Whether or not you own a globe lens, and, if so, of what size, and why do you use Mr. Black's?

(Objected to as before.)

Ans. I do own a globe lens of what is called the stereoscopic size. I used Mr. Black's for the reason that my lens was not large enough to do the required work.

Int. 9. Have you examined, and, if so, with what care, Plate 13. of book marked R. C. P., Book 1, Volume 2, with the oiled sheet accompanying it, together with the negative from which they were printed; and if so, please state with what result as to the accuracy of the work as to scale.

(Objected to as above, and because the witness is not shown to be qualified to give an opinion as an expert upon the matter.)

Ans. I have examined both the negative and the prints. I find that the oiled sheet, taking the central parts, and placing them on the outer corners of the print, vary; they do not correspond.

Int. 10. To what cause do you ascribe this variance?

(Objected to as leading, and as above.)

Ans. To the distortion of the lens.

Int. 11. What examination, if any, did you make of the negative hereinbefore referred to, and with what result as to the accuracy of the different parts or portions of it?

(Objected to as above.)

Ans. I measured the central parts, also the outer corners, and found them to vary. I found them to vary, but I took no note of how much; that is, the fractional part of an inch. But I found them to vary.

Int. 12. To what do you attribute this variance?

(Objected to as above.)

Ans. To the distortion of the lens.

Int. 13. Whether or not, in your examination of the negative above referred to, you noticed any, and, if so, what warping or curve in it?

(Objected to as above.)

'67 Ans. I noticed there was a curve or warp.

Int. 14. Having regard to the collodion side of the negative, what was the nature of the curve?

(Objected to as above.)

Ans. The collodion side of the negative was concave.

Int. 15. What effect, if any, would this concave surface have upon the accuracy of the work, if made by a Voigtlander lens?

(Objected to as above.)

Ans. I should say it would have made the work more accurate than though it had been flat.

Int. 16. In making photographic pictures, please state, if you know, how the shades of violet appear in the picture or print.

(Objected to as above.)

Ans. They always take very light.

Int. 17. How light?

Ans. That would depend on the shade of purple, or violet rather. I hardly know how to answer, unless you should tell me how dark a shade.

Int. 18. How would a slightly violet tint show?

(Objected to as above.)

Ans. Am I to understand that the violet tint is on a white surface or paper?

Int. 19. Look at the paper now shown you, marked F. W. P., No. 10, and, supposing it to be on that paper, please answer the question.

(Objected to as above.)

Ans. I don't think it would show at all.

Cross-examination:

Cross-int. 1. Why not?

Ans. I couldn't answer you why not. I can only prove to you that it would not by actual experiment.

Cross-int. 2. What was your business before you were a photographer?

Ans. I was a painter, an ornamental painter. I imitated wood and stone and flowers and fruit for furniture.

Cross-int. 3. Do you understand that the violet tint of the sun-ray has any effect upon the sensitive surface?

468 Ans. Sensitive surface? How am I to understand? Sensitive surface of iodide of silver or chloride of silver?

Cross-int. 4. Yes.

Ans. I never have separated the rays myself and could not answer the question from my own knowledge—that is, I have never demonstrated the fact myself by actual experiment.

Cross-int. 5. Do any of the seven primary colors have any effect upon the sensitive surface. If so, which?

Ans. I am to understand that the color referred to comes directly through the sun's ray, am I?

Cross-int. 6. You are to answer the question, and state your own understanding of it.

Ans. If you were to paint the primary colors out along on a piece of paper, and have them copied by the photographic process, or by photographic process, the blue and violet would take light, while the red, yellow, green, would take dark. The orange would also take dark. For the present moment, I can't recollect the other color.

Cross-int. 7. Indigo?

Ans. Oh, yes, indigo; that would take dark, but not as dark as the green or the red.

Cross-int. 8. Please to answer my question.

(The examiner, by request, repeats cross-interrogatory five.)

Ans. They all have more or less, according to the intensity of them, or the amount of color. If you were to give me the colors to photograph, you would find the blue and purple rays and the violet

very much lighter in the photograph than the reds, greens, and yellows.

Cross-int. 9. But you do find them?

Ans. A dark blue would show. You could make a shade or tint of blue that you could see with the eye, and still be unable to photograph it, in my opinion, if it was on white paper.

Cross-int. 10. Then it depends upon the intensity of the shade in each case, does it?

Ans. The darker the shade, the darker will be your photograph.

Cross-int. 11. Then if a very dark shade of black is mixed with a shade of blue, so as to be blue-black, what would be the photograph?

Ans. Very dark.

469 Cross-int. 12. And if any black color has mixed with it some slight tinge of another color, the photograph would be black, would it?

Ans. If the black color predominated, it would.

Cross-int. 13. Then, as you understand it, in the case of a composite color, its various rays assist more or less in the general effect upon a sensitive surface?

Ans. If you were to mix blue with black until it became more blue than black, it wouldn't take so dark as the black, being more dark than blue. (Witness here asks to have his answer read, then says: That gives the sense, but I think it's not exactly as I uttered it; and then says:) If you mix blue with black until the color is more blue than black, it would give a lighter color than if the black predominated.

Cross-int. 14. Please repeat the question. (To the examiner who does so.)

Ans. I don't know how to answer it any better than I have.

Cross-int. 15. Do not the various rays of a composite color each exert, in combination, their own greater or less influence upon the sensitive surface?

Ans. If you add white to red, you get more intensity as the white predominates over the red.

Cross-int. 16. Please repeat the question. (To the examiner who does so.)

Ans. I have answered as I understood it. I haven't taken up every color, and given the combination of colors that could be made. If you were to give me a combination of color or tint, I could tell you how it would photograph, whether light or dark.

Cross-int. 17. Please not to evade the question but answer it, yes or no.

(Objected to because it does not appear that the witness has attempted to evade the question.)

Ans. I couldn't answer yes or no, unless you told me what exactly the combination of color was. It would be very difficult. I might mix a color where either of the component parts would exert the greatest power, or take lighter or deeper.

Cross-int. 18. When five weights are concurrently pulling upon

one object, some very light and some very heavy, they all co-operate in the pull, do they not?

470 Ans. I should suppose so, although I am not well versed in mechanics enough to give an opinion, perhaps.

Cross-int. 19. Don't you know?

Ans. I told you I was not versed in mechanics enough to answer scientifically, correctly. I couldn't do it.

Cross-int. 20. Now just as these weights co-operate in mechanic force, do not the various colors of a composite color co-operate in making an impression upon the sensitive surface?

Ans. If you will tell me what the composite color is, I will tell you whether it will take lighter or darker. I should be unable to tell how much influence one color had on the other until I knew the component parts of the color, or the composition, rather.

(Counsel take up another subject temporarily.)

Cross-int. 21. Please to point out any place in the central portion of said Plate 13, which you say varies from any other place.

Ans. Well, you might measure from 40 to 41, and place it over 31 to 32, (on left perpendicular, all these numbers,) and you would find a variation there. Shall I answer from memory or try the rider?

Cross-int. 22. From memory.

Ans. Take from 36 horizontal to 38, place it on 88 to 90, and you would find a difference. I presume the same would apply to any of the central parts put on the corners, the extreme outside corners, if I recollect it right.

(Counsel for plaintiff wishes it recorded that counsel for respondents here cautioned the witness, who was taking up the rider, "not to make any experiments.")

Cross-int. 23. Just locate any discrepancies in the oiled sheet.

Ans. From actual measurement?

Cross-int. 24. No; just locate any discrepancy that you observed in the oiled sheet with Plate 13.

Ans. I found the same discrepancies in the oiled sheet that I did in the photograph.

4.40 p. m.—Adjourned to Wednesday, May 29, 1867, 10.30 a. m.

471. WEDNESDAY, *May* 29, 1867—10.30 a. m.

Postponed by consent to 12 m., when the examination proceeded as follows:

Cross-int. 25. Please to locate any discrepancies that you noticed in the negative referred to.

Ans. I did not try the oiled sheet on the negative, but should say the same discrepancies were there as in the oiled sheet. I did not make actual measurements, but knowing one to be printed from the other cannot see any chance for a great disagreement in lines if one came right from the other, in contact with the other—was printed from the negative, so that they both were in contact at one time.

Cross-int. 26. On which one did you make any actual measurements?

Ans. The only actual measurements I made, were by placing the

oiled sheet over different parts of the photograph, and seeing the amount of distortion—to see the amount of distortion, rather.

Cross-int. 27. Then you made no measurements whatever on the negative?

Ans. No actual measurements—not that I could give you the fractional parts of an inch, for I had nothing to do that with that was accurate enough to do that.

Cross-int. 28. Have you not just stated that you did not make actual measurements on the negative?

Ans. I meant to state that I did not make measurements in inches and fractional parts of inches, and make notes of them—or I might say I made measurements with a piece of paper, just measuring from one part to another in different parts to satisfy my eye whether it was correct or not. I made no notes of what I had done.

Cross-int. 29. Did you use any dividers on the negative?

Ans. I did not.

Cross-int. 30. Can you now locate, except by inference, any actual discrepancies in the negative?

Ans. Am I to understand by "inference" that that means actual measurement?

Cross-int. 31. Don't you know what "inference" means?

Ans. Not in the sense he asked the question.

472 Cross-int. 32. Explain your understanding of the word "inference."

Ans. If I should hear two men talking on a subject, I could say to you I inferred from what they said that the license question was under consideration.

Cross-int. 33. Why so?

Ans. From certain expressions used by the parties.

Cross-int. 34. Having now indicated your understanding of the word "inference," can you locate any discrepancies in the negative, without having any regard to the prints?

Ans. I should say the outside corners were badly out of focus.

Cross-int. 35. Locate any particular place that you are willing to testify is out of focus, or out of correspondence with any other place, in the negative.

Ans. Either of the outside corners would be out of focus, and, I think, would measure more than the corresponding space from the centre or central part of the negative.

Cross-int. 36. That is a matter of opinion with you, is it?

Ans. No; it isn't matter of opinion. I measured sufficiently accurate to satisfy myself in the matter, although I made no notes, and could not give you the inches or fractional parts of inches of the discrepancies.

Cross-int. 37. Then do you mean to say that the space in each corner representing an inch differs from the representative of an inch in the centre.

Ans. I do.

Cross-int. 38. Are you aware that the corner scales are of different grading from the central ones in the originals?

Ans. I understand the perpendicular ones to be divided a little different, or they show a little different in the photograph, but still an inch space, measuring in the centre or central part. placed on the extreme corners, from the corresponding scales, would show the discrepancies I speak of.

Cross-int. 39. Did you examine the originals from which said photographs were made at all?

Ans. I did not.

Cross-int. 40. When you were examining the negative, did you have any scale with you by which an inch could be exactly measured?

473 Ans. I had none of my own. I think I saw one or two scales there. I did not measure an inch with them.

Cross-int. 41. What is the mode by which a ray affects a sensitive surface?

Ans. I couldn't tell you.

Cross-int. 42. Suppose a red ray, or the red portion of a solar ray, to be so refracted as to be entirely separated from all other elements of the solar ray, would it have any effect upon the ordinary sensitive surface used in photography?

Ans. I don't understand that there is a red ray in the solar spectrum.

(The 43d cross-interrogatory dropped by inadvertence.—F. W. P.)

Ans. If I understand it right, it is a violet. It is sometimes called violet or red. I may be mistaken, but that is as I remember it now.

Cross-int. 44. Do you acknowledge any green ray in the solar spectrum?

Ans. We see a green, but it's a combination of the green and yellow.

Cross-int. 45. Do you acknowledge any yellow ray in the solar spectrum?

Ans. Yes.

Cross-int. 46. Suppose that yellow ray to be refracted entirely by itself from all the other elements of the solar ray, would it have any effect upon the ordinary photographic sensitive surface?

Ans. As compared with the blue and violet, you would hardly find any markings on your negative.

Cross-int. 47. Explain which affect the negative the most?

Ans. The blue and violet.

Cross-int. 48. Which next?

Ans. Purple.

Cross-int. 49. Which next?

Ans. If they were all set up together, the blue, purple—I should have said indigo, rather, though that is purple—would be the only colors that would show on iodide of silver, or show any difference on iodide of silver.

Cross-int. 50. Which next to the purple?

474 Ans. I could not tell you which next. When printed, all show the same color, except the colors named—blue, indigo, and violet. This negative is taken on iodide of silver.

Cross-int. 51. Is not the mode of action upon the sensitive surface by a chemical removal of more or less portions thereof?

Ans. I think it is. Yes. (Witness says, I would like to have you read the question once more. The examiner reads it.) Yes.

Cross-int. 52. Some rays remove more and some less, do they?

Ans. Yes. The rays that act the most leave the most in the negative, or give the greatest intensity.

Cross-int. 53. Leave the most what in the negative?

Ans. That is a disputed point. I shouldn't be able to answer it to my own satisfaction, by any means.

Cross-int. 54. Does not the extent of the effect upon the negative depend upon the goodness of the day, as you call it?

Ans. Some days the light is what we call more actinic than others.

Cross-int. 55. Are you aware that none of the color rays of the spectrum have any chemical effect upon the negative whatever, when acting by themselves, separately?

(Counsel for respondents requests that it be noted that, at the request of witness, the question was twice reread to him.)

Ans. I am aware that the orange color does not affect the sensitive surface of iodide of silver. If it did so, we could not work at photography. That ray is so insensitive to light that we can manipulate all our—or go through all our manipulations in a room lit by an orange glass—orange-colored glass.

Cross-int. 56. Is that all the answer you can make to the question?

Ans. Please read my answer. (To the examiner, who does so.) That is all.

Cross-int. 57. Have you any knowledge which elements of the solar ray are the ones that exert chemical action?

Ans. The blue, violet, and indigo exert the most.

Cross-int. 58. Is that all you know about the chemical qualities and forces of the solar ray?

Ans. I think it is.

Cross int. 59. When the solar ray is refracted, have you any knowledge of any rays or their action or effect becoming apparent, except so far as concerns the seven color rays?

475 Ans. Please read that once more; I don't think I understand the question. (Counsel for respondents desires that this be noted. The examiner reads the question.) I don't understand the question to answer it.

Cross-int. 60. Do you know anything of the action, effect, or properties of any elements or elementary rays of the solar ray, except so far as you think you know concerning the seven color rays?

Ans. Read it once more, please. (The examiner does so.) I certainly couldn't answer the question. I don't understand what you want.

Cross int. 61. Have you any knowledge of any other focus to a lens except a color focus?

Ans. A chemical focus.

Cross-int. 62. Can you explain the operation of any other rays except the seven color rays?

Ans. I cannot.

Re-examination:

Int. 1. In giving your answers to the cross-interrogatories in regard to the negative, have you had the negative present before you, or have you testified from your recollection of a previous examination of the negative?

Ans. From my recollection of a previous examination of the negative.

On hearing his answer to cross-interrogatory eight read, the witness says, When I say "they all have more or less," if I were to sit you with a black coat or a red coat or a yellow coat for a photograph of yourself, I should get a definition in each case from the object photographed, or from your body. This part of the coat here, the lappel, would show lighter than it would in shadow, under the arms or back or side. It would also show that I was photographing from a round or solid substance, instead of a flat, plane surface of cloth. I have stated that the colors in the solar spectrum only show the blue, violet, and indigo. That is as I understand it with a plate of iodide of silver. If you wore a green coat, the light falling where the highest light would be, would show a difference in the density of the negative from the highest light to the deepest shadow. The deepest shadow would be very black.

FRANK ROWELL.

476 MAY 30, 1867—10 a. m.

Deposition of Charles V. Woerd.

Charles V. Woerd, of Waltham, near Boston, aged forty-five years, being duly sworn, testifies as follows:

(Counsel for complainant states, on producing this witness, that the examination of the witness is made de bene esse, without waiving any objection to the testimony offered by the respondents in regard to the genuiness of the signature Sylvia Ann Howland to the papers produced in this cause, marked F. W. P., 10, and F W. P., 15.

Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

My occupation now is assistant superintendent in the American Watch Company. It's nearly seven years—a little over seven years, that I have been there. I came to the watch company from Mr. Alvin Clark, of Cambridge.

Int. 1. State, if you please, what your occupation was at Mr. Clark's, and how long you were so employed?

Ans. I was employed there two years and a half, to the best of my recollection. I did the work what was done there.

Int. 2. What, if anything, had that work to do with the manufacture of lenses?

(Question objected to as immaterial.)

Ans. Well, not a great deal.

Int. 3. What experience, if any, have you had in the manufacture of lenses?

(Objected to as above.)

Ans. Well, I made lenses when I was with my father. I have more or less made some lenses for my own gratification. I made one lens for a telescope for a gentleman in Waltham, four and a half inches aperture, if I recollect aright. That is the largest I ever made. I made perhaps half a dozen of them for different parties. Of late I have devoted more time and thought to photographic lenses, with a view to improve that class of lenses.

Int. 4. Whether or not you have made any, and what, examination of the comparative characteristics of the different lenses employed in photography?

Ans. I have.

477 Int. 5. What, if anything, are you now engaged upon, in regard to photographic lenses?

(Objected to as immaterial.)

Ans. I am making a set of lenses now with the object of increasing the field without distortion. I might, perhaps, in order to understand that more properly, give some more information if it is desired. The object of these lenses is to take instantaneous views, and it is necessary for that purpose to have a large aperture letting in a large amount of light with good definition.

Int. 6. How long have you made the subject of photographic lenses a subject of investigation and experiment?

(Objected to as above.)

Ans. It is about five years.

Int. 7. State, if you know, what are the characteristics of the Voigtlander lens.

(Objected to as above.)

Ans. It gives a large aperture. It has a large aperture, definition, depth of focus, but imperfection by distortion.

Int. 8. How and where does this distortion show itself?

(Objected to as before.)

Ans. It generally does along the edges of the field. It's owing to what is technically called having a flat field—giving a flat field would perhaps be more proper.

Int. 9. Does or does not the Voigtlander lens have a flat field, and what is the peculiarity of this lens, if any, in regard to its field?

(Objected to as leading and as above.)

Ans. It has not. It is necessary, in taking a large group of persons, to arrange them in the form of a circle, or perhaps nearer a parabolic curve, in order to get all the objects or subjects in focus, whereas, if they were seated in a straight line, part of them would be out of focus.

Int. 10. State whether or not, in the Voigtlander lens, the surface of the lens nearest the object to be photographed has or has not the same curve as the surface of the lens nearest the collodion surface of the negative.

(Objected to as above.)

Ans. It has not.

Int. 11. What effect, if any, has this difference in these curvatures upon the accuracy of the work made with this lens?

(Objected to as immaterial.)

478 Ans. I don't know as that has any, as it is a combination, and it would be very difficult to determine.

Int. 12. To what peculiarity or characteristic of the Voigtlander lens do you attribute the distortion of the work which you have referred to?

(Objected to as immaterial, and as implying some knowledge on the part of the witness which it does not appear that he possesses.)

Ans. There is—four things are necessary in a lens. I have to take this course in order to make it intelligible. To make such a lens perfect for all kinds of photographic work is, first, large aperture in proportion to the length of the focus, depth of focus—definition, and flatness of field. Now, I don't think those can be got with our present knowledge of lenses, that is, combined. We have got to sacrifice one or the other for the purpose it is intended to be used for—to suit the class of work—the Voigtlander lens being made for portraits, sacrificing one of the essential things, correctness of size.

Int. 13. State, if you know, what are the characteristics of the globe lens.

(Objected to as above.)

Ans. The characteristics of the globe lens are its large field or angular aperture, as it is usually called—flatness of field—definition, at the expense of large opening. A very small opening is necessary.

Int. 14. State, if you know, for what purposes the globe lens is employed.

(Objected to as above.)

Ans. They are employed mostly for copying purposes.

Int. 15. Why?

(Objected to as above.)

Ans. On account of its flatness of field and its definition, as time is of no consequence.

Int. 16. Which is the most accurate lens for copying now known in photography?

(Objected to as leading and incompetent and immaterial, and because it does not appear that the witness has any knowledge which would enable him to enlighten the court on that subject.)

Ans. To my knowledge it is the globe lens, though some claim that the lately-invented Zendmayer is equal, if not better, for that purpose. I have not tested it myself.

Int. 17. Are the curves of the globe lens—I mean the one nearest the object to be photographed, and the other nearest the collodion surface of the negative, arcs of the same or different spheres?

(Objected to as above.)

479 Ans. They are the same.

Int. 18. Whether or not the error or distortion of the Voigtlander lens can be eliminated by the use of a diaphragm?

(Objected to for form, and as above.)

Ans. I think they can be only diminished, but not wholly obliterated.

Int. 19. Where accuracy of work was sought for and the work to

be done was copying, whether or not would a Voigtlander lens or a globe lens be the proper lens to be employed, and how well is this known to photographers?

(Objected to as leading in form, immaterial in fact, assuming a fact not proved, and knowledge on the part of the witness not apparent from his examination.)

Ans. I think that most any photographer understanding his business would certainly employ the globe lends in preference.

Int. 20. What experience, if any, have you had of the practical working of the photographic art?

(Objected to as immaterial.)

Ans. As I said before, I have more or less worked at it for the last five years, devoting most all of my leisure time to it.

Int. 21. Whether or not you yourself have pursued the making of pictures in all its steps by photography, to any, and what extent?

(Objected to as leading, immaterial, and as cross-examination.)

Ans. I have pursued the art. I have never made a business of it, only making pictures for my own gratification and some of my friends, and for some purpose—investigation—purpose about which I don't care about saying anything. I lately made some scales for Mr. Alvin Clark—photographed some scales—to be used in spectroscopes, for measuring the distance of the black lines in the solar spectrum, or other lights, artificial.

Int. 22. Have you examined Plate 13 in the book marked R. C. P., Book 1, Volume 2, with the oiled sheet accompanying it, together with the negative from which they were printed, and, if so, with what result?

(Objected to as above, and because it cannot appear from the question, in the absence of the negative inquired about, that the negative is the one from which the photograph was taken.)

Ans. I have examined those. I made some notes at the time, but forgot to bring them this morning. I can say what I know about it from my memory, and can furnish the notes any time. In examining the prints, which I did first, I found an error of about one-
480 thirty-third ($\frac{1}{33}$) of an inch, that being the greatest error. I found that the error did not extend all around the field, and told Mr. Bartlett I wanted to see the negative before I could give a correct opinion. After examining the negative, I found the same error to exist, with the same peculiarity of not going round the field, that is, on opposite sides. This peculiarity of not being alike—the error not being alike—on all sides, is caused by the glass plate being very much warped or crooked—imperfect. I found that the prints very nearly agreed with the negative they were taken from, as near as I could see with the common eye-glass, about four-inch focus—watchmaker's eye-glass. It is my opinion that if perfect glass had been used the error would have been the same on opposite sides.

Int. 23. What is the cause of the error which you refer to—understanding the question to refer to the fact of the existence of the error and not to the irregularity in the error?

(Objected to as immaterial, as incompetent in the absence of the negative and without identification of the negative, and as above.)

Ans. I think it's caused by the aberration of the lenses. The ground for thinking so is, that there was an error in the same direction on opposite edges, though not wholly equal.

Int. 24. Assuming that negative to have been made by the use of a Voigtlander lens, what effect, if any, upon the accuracy of the work would the warped or imperfect surface of the negative, which you have referred to, have?

(Objected to as above and the witness having shown no qualifications or situation to testify as to the radial effect of alleged imperfect curves, warps, or imperfect surfaces.

Ans. Well, if I remember right, the warp in the glass would tend to diminish the error arising from said aberration.

(Counsel for complainant request the examiner to produce and show to the witness the photographic negative referred to by John A. Whipple in his deposition taken by the examiner, and left by Mr. Whipple in his custody. Counsel for respondents now request the examiner to identify the said negative when he produces it. The examiner produces the negative, which has been in his custody ever since it was placed there by Mr. Whipple, and marks it for identification, Negative F. W. P.)

Int. 25. Please look at the photographic negative now shown you by the examiner, marked Negative F. W. P., and state whether
481 or not that is the negative referred to in your answers to the twenty-second, twenty-third, and twenty-fourth interrogatories.

Ans. It is.

Int. 26. Please look at that negative, and state whether you were or were not correct in your answer to the twenty-fourth interrogatory.

(Objected to as leading, and in the nature of cross-examination, and for the reason that the witness does not appear qualified, from his previous examination, to give an opinion which would enlighten the court.)

Ans. Well, I think I was. Yes. I see that it is concave on the collodion side.

Int. 27. Where accuracy of work is sought for, what glass—what kind of glass, should be used for the negative?

(Objected to as above.)

Ans. I should use plate glass.

Int. 28. Please look at the negative marked Negative F. W. P., and state what kind of glass that is.

(Objected to as above.)

Ans. I should judge it to be about ordinary window glass—about the quality of ordinary window glass.

Int. 29. State whether or not it is plate glass.

(Objected to as above.)

Ans. It is not what we usually call plate glass. As I understand plate glass, it is glass which has been ground perfect surface, and polished.

Int. 30. Please state whether you have recently, and, if so, how

recently had any, and what conversation with Mr. Alvin Clark with reference to the character of the Voigtlander lens; and if you have had any such conversation, please state how it happened, and all that occurred, as nearly as you can, in substance.

(Objected to as leading, and because no found ationwas laid for the introduction of the testimony by the examination of the witness, Mr. Clark, upon the subject, and that, therefore, any attempt to contradict, control, or affect his testimony by this examination of the present witness, is irregular and against the well-settled rules of the court.)

Ans. This last week. I don't seem to remember the day. No, hold on, let me think a moment. It was last Monday I went to Mr. Clark on some little business I had, and Mr. Clark mentioned to me about a case he was called upon, in regard to some negative taken with lenses, Voigtlander lens, and told me at the same time what his opinion was about it—what opinion he had given about it.

482 Without my telling him then that I had been called upon for the same purpose, I told him that I thought he was very much mistaken in regard to the Voigtlander lens, and had some little discussion about it. I asked Mr. Clark whether he was aware that in taking a group, where the whole size of the field is necessary, or nearly so, it is necessary to place the different persons to be taken in the form of a circle or perhaps more properly a parabolic curve, in order to get them all in focus. I asked him the question—no—first, I ought to have said, he made no answer. And I was inclined to think he wasn't aware of that fact. I asked him the question if, instead of the curved line—forming several people in a curved line—substituting a perfectly flat surface in the place of it, what the effect would be, and whether the ends would not be entirely out of focus. He said he thought they would. I asked him then what would be the consequence, and that as a natural consequence, in my opinion, those parts which were out of focus would be either larger or smaller, as the case may be, whether the—according which way the field was curved. He said he didn't think that it would necessarily follow that those points would be larger or smaller when so out of focus. I then asked him the question, whether he thought that the rays of light, after passing through the glass, could be bent off their course of their own accord. If they did not, which he admitted, it would naturally follow that those points would be larger there, or smaller, which I think I demonstrated by a diagram. He made no answer to it. He then said that he thought by altering the distance between the two glasses which are towards the collodion side, that the field could be flattened by that means. I told him it could not. He asked me whether I had tried it. I told him I had, several times. Well, says Mr. Clark, I thought, says he, I tried that some years ago. I told him that was just what I was after in making those lenses he was roughing out for me—what is usually called coarse grinding. I told him I should be very happy to know that the thing could be done as easily as he proposed to do it. That certainly I could not do it. It seemed to me, after we got through, that Mr. Clark

thought he had made a mistake. The subject then was dropped. Some little time afterwards I said to Mr. Clark. I have not told you yet that I was called upon in the same case. I don't know as I can say any more. We had a good laugh over it.

483 (Respondents object to answer as irresponsive so far as it expresses mere opinions of the witness not communicated to Mr. Clark; where responsive, incompetent, and the introduction of hearsay testimony, and otherwise irregular.)

Recess—1.20 to 2.20.

Cross-examination:

Cross-int. 1. Point out on Plate 13 any of the discrepancies you have referred to.

Ans. They are mostly along the edges. The centre divisions, take one edge for instance, are nearer together than they are on the corners. By measuring around all the sides, I find that the same thing, take the middle of each scale and compare it with the ends, there is a difference, but it is not uniform entirely.

Cross-int. 2. Please to answer the question put you.

Ans. I can do so as near as I can remember. I made a memorandum of the figures at the time. I find the corners and the centre on one side—both sides are alike in that respect, it don't make any difference, with the exception of one thing, that the error is not so great on one side as it is on the other. I don't recollect which is the less. I find also that same error to exist in the middle scales, the fine scales. There is also a difference there between the centre and the ends, that is, the upper middle. That same difference exists in the upper marginal and the lower marginal also. Also the lower middle.

Cross-int. 3. You are desired to avoid the use of vague terms, and answer the question, locating by the printed numbers the dis repant spaces of which you testify.

Ans. I don't know as I understand that question. I don't know what is wanted; I don't think I have used any vague terms. (The examiner, at the request of counsel for respondents, explains to witness that he is desired to state what spaces included between lines opposite which figures are printed, if any, differ from other and what similar spaces—using the figures to indicate the spaces he refers to.) 16 to 22 on right marginal, in measuring, I ought to have said, from 16 to 22, and measuring from 6 to 10 on same marginal. I find those very nearly alike. I remember there is an error here somewhere. I said from 6 to 10, and before I had from 16 to 22. What I wanted

484 to state was, that the same number of divisions, taken from No. 6 upwards, on the right marginal, will bring it to 12, from 6 to 12, measure about the same; but taking the same measure from 10 to 16, there is an error. In measuring the divisions on the left-hand margin, the same error exists, measuring in a similar manner, but not to so great an extent. I said not to so great an extent on the left-hand margin. I want to make a correction there. I don't know which of the two it is which is more or less. In taking a cer-

tain number of divisions on the lower margin, from the left-hand corner, say from 88 to 92, comparing with the same number of divisions on the right-hand corner, lower margin, from 106 to 108, those two seem to be very near alike, but comparing either, from 88 to 92 or from 104 to 108, with an equal number of divisions from 96 to 100, situated in the centre of the lower margin, those won't agree. A similar error exists also in the upper margin scale, marked zero to 20. Also from 28 to 48. Also the same from 56 to 76, in a more or less degree.

Cross-int. 4. Point out any particular inch in the upper margin that varies from any other particular inch.

Ans. Zero to 1 varies with the one 9 to 10.

Cross-int. 5. Also in upper middle.

Ans. From 27 to 28 differs with 36 to 37.

Cross-int. 6. Also in lower middle.

Ans. From 55 to 56 differs with 64 to 65.

Cross-int. 7. Also in lower margin.

Ans. From 88 to 89 differs with 98 to 99.

Cross-int. 8. Also in right margin.

Ans. From 5 to 6 varies with 13 to 14.

Cross-int. 9. What do you mean by "varies with?"

Ans. There is a difference between the two, an error.

Cross-int. 10. Also in left margin.

Ans. From 47 to 48 differs from 40 to 41.

Cross-int. 11. Which is the largest in said left margin?

Ans. I couldn't tell you, because I made a note of it at the time and I haven't got it here now.

Cross-int. 12. Please to state which is the larger in each of these couples which you have thus compared, and just testified to.

Ans. I have already stated that I don't distinctly enough
485 remember to—on which margin there is the greatest difference—the greatest error.

Cross-int. 13. Please to repeat the question. (To the examiner, who does so.)

Ans. You, so I understand it, mean this, whether the inch from 47 to 48 is larger or smaller than the one from 40 to 41. I think from 47 to 48 is the largest. From 5 to 6 and 13 to 14 is in the same direction, on right margin. The error is in the same direction. From 5 to 6 is larger than from 13 to 14. In lower margin, 88 to 89 and 98 to 99, the larger is from 88 to 89. In lower middle of 55 to 56 and 64 to 65, the larger is from 55 to 56. In upper middle of 27 to 28 and 36 to 37, the larger is 27 to 28. In upper margin of zero to 1 and 9 to 10, the larger is zero to 1.

Cross-int. 14. Do you observe the same errors in the oiled sheet?

Ans. I did not measure that one by itself; but by laying the one on the other, as far as I could see, they agreed perfectly when put in the same position.

Cross-int. 15. What instrument did you use to measure with?

Ans. I used a Brown and Sharp's scale, engine-divided, divided into hundredths of an inch.

Cross-int. 16. That is made of paper, is it not?

Ans. No, sir; it is a metallic scale It is a flat scale, made in German silver. I have not it here. There are no adjustments or movable portions on it.

Cross-int. 17. Is that all you used in making your measurements?

Ans. I used that in connection with a magnifier.

Cross-int. 18. What was the amount of difference that you can testify to between any inch and any other on said Plate 13? and name the inches.

Ans. I could not testify to the error between any one inch and another, as measuring them in that manner would not be the proper way to arrive at a correct result. I can state a difference between a certain number of inches taken from either the left or right-hand corner on the marginal scale. Comparing them with a certain number of inches, or the same number of inches in the marginal scales, I found a difference, by measuring it in that manner, of one-thirty-third ($\frac{1}{33}$) of an inch. To state more correctly, three-one-
486 hundredths ($\frac{3}{100}$) of an inch, that being the greatest difference.

Cross-int. 19. A variance of three-one-hundredths (.03) of an inch in what length?

Ans. In about five inches.

Cross-int. 20. In your answer to the eighteenth cross-interrogatory you say "measuring them in that manner." State distinctly what manner you meant.

Ans. By taking five inches at one corner on a marginal division and noting the number of hundredths of an inch, and taking five inches in the middle of the scale on a marginal and noting the difference between the two.

Cross-int. 21. Did you examine the original scales from which that photograph was made, I mean Plate 13?

Ans. I only looked at them.

Cross-int. 22. (De bene.) Who was present at this talk with Mr. Clark, of which you have spoken?

Ans. I don't remember of anybody being present during the whole conversation. Either one of his sons was there part of the time, as near as I can recollect.

Cross-int. 23. (De bene.) Where was it?

Ans. At Mr. Clark's shop, Cambridgeport.

Cross-int. 24. (De bene.) Why did you go there?

Ans. I went for the purpose of carrying some scales which I had photographed for Mr. Clark, and also to get a set of lenses which he was going to rough out for me—photographic lenses—also on a friendly visit. I had not seen him for some time.

Examination from this point proceeds de bene:

Cross-int. 25. How came you to think of making a friendly visit just then?

Ans. I should like to know what "just then" means.

Cross-int. 26. Is that all the answer you can give to the question?

Ans. I have already stated what my object was in going there, which I think is sufficient.

487 Cross-int. 27. Please to answer the question under oath. How came you to think of making a friendly visit just then?

Ans. I don't see as I can answer the question until I understand it. I don't know what "just then" means.

Cross-int. 28. What is your doubt about the meaning of such common words?

Ans. I understand the words, but I don't understand what it has reference to "Just then" has a relation to something else, which I don't understand.

Cross-int. 29. Something else than what?

Ans. I must admit that I don't know what you mean.

Cross-int. 30. How came you to think of making this friendly visit just at the time you did?

Ans. Because I was obliged to go in Boston, and Mr. Clark wanted the scales and I wanted the lenses, and since I had to leave my business that day, I went over there.

Cross-int. 31. When were you first spoken to in this Howland will case?

Ans. I don't know anything about the Howland will case. I didn't know that such a thing existed. At least I don't remember hearing that name before.

Cross-int. 32. When were you first spoken to about the case you are now testifying in?

Ans. I think it isn't over eight or ten days ago.

Cross-int. 33. Fix it as near as you can

Ans. I can't say. It is somewheres near last week; I think in the early part of the week.

Cross-int. 34. By whom and where? And how did the interview happen?

Ans. By Mr. Francis Bartlett. He came to me at the watch factory in Waltham.

Cross-int. 35. Did you see him again last week, and when and where?

Ans. I did. I saw him at his office here. I remember now more distinctly; I think that Mr. Bartlett came to me on Monday—last week Monday, and requested me to come in the following Wednesday, I think. I saw him on the following Wednesday, I think, at his office here.

488 Cross-int. 36. Did you see him any more that week?

Ans. No; I think not.

Cross-int. 37. Did you see anybody else about the same subject last week?

Ans. I don't know as I did.

Cross-int. 38. Why don't you know?

Ans. Because I have a good deal of business in my head, and I didn't take enough interest in it to remember any small incidents—I didn't know anything about the case—didn't know what it was.

Cross-int. 39. Don't you know whether you had any conversation with or message from any person last week, except those you have already mentioned, about this matter?

Ans. I have not. I mentioned the one or two of them, that I was called upon to examine those things—that's all that I have any recollection of. One of them was Mr. Robbins, our treasurer—the treasurer of the American Watch Company.

Cross-int. 40. What did Mr. Robbins know about the matter?

Ans. I don't know as he did any—don't know as he did know anything about it.

Cross-int. 41. What do you mean by introducing his name there, then?

Ans. I don't mean anything by it. I merely mentioned to him that I had to be in Boston at that particular day, which is to-day.

Cross-int. 42. After you saw Mr. Bartlett, on Wednesday of last week, when next did you have any message from or conversation with any one interested in this matter?

Ans. I had a message from Mr. Bartlett in reference to the day fixed that I was a-coming in, postponing the time of meeting till the following day, as he said he hadn't been able to get the negative yet. I am a little mixed up about the time last week; but the first message I had from Mr. Bartlett, I believe, was—I was to come in on Wednesday, I think, and he wanted me to come in Thursday. Next he wrote me to come Friday. Next he wrote me to come the following Monday, which I did last Monday.

Cross-int. 43. What time of day last Monday were you at this office?

Ans. I agreed to come in with the twenty minutes of four
489 o'clock train from Waltham, but as I had to attend to some business in Boston, and wanted to go over to Cambridge and carry those scales to Mr. Clark, last Monday, I came in early—that is, by nine o'clock train, but did not see Mr. Bartlett till about two in the afternoon.

Cross-int. 44. Did you then report to him your conversation with Mr. Clark of that morning?

Ans. I did.

Cross-int. 45. When you went to see Mr. Clark, did you know that he had testified about this matter?

Ans. Yes, sir; I did.

Cross-int. 46. How?

Ans. Mr. Bartlett told me.

Cross-int. 47. When you went to see Mr. Clark, didn't you expect to talk with him about this subject?

(Objected to—form.)

Ans. I never gave it a thought.

Cross-int. 48. Mr. Bartlett told you what Mr. Clark had been testifying, did he?

Ans. He did.

Cross-int. 49. How long was this before you went to see Mr. Clark?

Ans. Five or six days, I think. I don't remember exactly.

Cross-int. 50. And you were to see Mr. Bartlett in Boston the afternoon of the day you saw Mr. Clark, were you?

Ans. Yes.

Cross-int. 51. You have testified that when the conversation, which you say began with Mr. Clark, did begin, that you didn't tell him that you had been called upon, and were going to testify. Why didn't you tell him?

Ans. When it begun, he—I thought rather I had better hear his opinion about the Voigtlander lens, as I was more interested in that particular subject of lenses than anything else, and by so doing draw him out, and see what he knew about the subject, and so gain any information in regard to it, in regard to lenses, I might learn, but after I found that what I considered I knew more about it than he did—about that class of optics or lenses, I very naturally contradicted him, and I then told him that I was called on the same case. I believe that answers the question.

490 Cross-int. 52. And to draw him out, then, was your motive for not stating that you had been employed?

Ans. No. I don't think I had any such thought at the time.

Cross-int. 53. What was your occupation before you worked in Mr. Clark's shop?

Ans. I was a machinist, and followed the business of general mechanical engineer.

Cross-int. 54. What did you do?

Ans. Carried on the business.

Cross-int. 55. What pay did you get in Mr. Clark's shop?

Ans. I don't remember.

Cross-int. 56 As nearly as you can swear.

Ans. Well, I couldn't—it is impossible to tell now, at this late day. I first went to Mr. Clark as a favor. He was very much pressed with work at the time, and could not find anybody to do it for him.

Cross-int. 57. Can't you tell whether you got three dollars, or more or less, when you worked with Mr. Clark?

Ans. Well, I think it is very likely it was in that neighborhood. I think it was two dollars and a half. He agreed that he would give me the highest price that was given to machinists at that time.

Cross-int. 58. Are you an educated man?

Ans. I should like to ask the question what you mean by educated? There is a limit—that is—to what limit, I meant.

Cross-int. 59. Have you ever been to any institute of art, scientific school, or place of instruction, or college?

Ans. I have been to one institute, Mathew's Scientiarum Genetrix, at Leyden. I went there after I left the common school, and after I had gone at work to learn a trade. I attended that in the evenings four times a week, I believe some five or six years. I believe I was about twelve when I left common school, and I went to the institute immediately.

Cross-int. 60. Please to refer to that negative, and see which way the bend is perceptible.

Ans. The collodion side is the hollow side, or concave side, rather. It is rounding in both directions, that is, in length and breadth. The concavity extends to the top edge, where the mark of identification is, and to the right-hand edge, looking at the collodion side,
491 mark of identification upwards—to the bottom, the plate held in the same way, and the left edge; to the right edge, less than to the other three.

Cross-int. 61. Then the glass has a double bend, has it, one by its length and one by its breadth?

Ans. Yes. We don't generally express it that way—"concave" covers the whole ground.

Cross-int. 62. How can it be concave, if bends are distinguishable in two ways?

Ans. The bend might be cylindrical, which is only in one direction.

Cross-int. 63. This is a double cylindrical bend, is it not?

Ans. If it was a perfect one it would show sharp indentations running from each corner towards the centre, the same as in the case of two cylinders intersecting each other.

Cross-int. 64. And without being a man of science, and without having computed the almost infinite elements of a duplex and irregular warp, made, you know not when, you undertake to say what can be its effect upon the rays from a lens you never saw?

Ans. That last part of the question I don't exactly understand. Please to repeat it. (The examiner does it.) No; I should not want to undertake to say exactly, that is mathematically speaking, what would be the effect, except by approximation.

Re-examination:

Int. 1. Who, if any one, asked or suggested your going to see Mr. Clark and talking about lenses?

(Objected to as leading, and as including an unwarrantable assumption.)

Ans. Nobody did.

Int. 2. Using the watchmaker's glass and the measure you have spoken of, how accurate a measurement could you have made in your examination of the scales?

(Objected to as being direct examination.)

Ans. Well, those scales being rather imperfect, I don't believe that I could measure any nearer than to the two-hundredth part of an inch.

(Answer objected to, the witness having shown no qualification.)

CHAS. T. WOERD.

492 JUNE 1, 1867—9.30 a. m.

Deposition of Oliver Wendell Holmes.

O. W. Holmes, of Boston, aged fifty-seven years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that the examination of the witness is made de bene esse, without waiving

any objection to the testimony offered by the respondents in regard to the genuineness of the signature Sylvia Ann Howland to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15.

(Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

I am Parkman professor of anatomy and physiology in Harvard University—in the medical school of Harvard University. I have been professor for twenty years there.

Int. 1. Whether or not is it part of your course of instructions to students, and, if so, how long has it been so, and to what extent, to teach the use of the microscope? If you shall answer affirmatively, will you state the number and variety of microscopes, and the names of their makers, which are owned or have been employed by you?

(Objected to, immaterial.)

Ans. For a number of years I have taught the use of the microscope to the students of the Harvard medical school. It's a good many years, I see, when I come to think, because I bought a parcel of microscopes a good many years ago. I can't tell just how many. It has been a part of my duty to teach the use of the microscope in this way for many years, every year for variable periods. The instruments I own and have used are of the make of Spenser, Oberhäuser, of Chevalier, of Greenow, and several little glasses. Those are all instruments of some size. With the mechanical arrangements of the microscope, not the optical, I have made certain improvements, I think. When I say that I bought a parcel of microscopes a good many years ago, I mean that I then bought several additional microscopes—six, I think. I had plenty of microscopes before.

493 Int. 2. Have you examined the papers now shown you with the aid of the microscope? Papers marked F. W. P., Nos. 1, 10, and 15?

Ans. I have.

Int. 3. Please state what was the nature of that examination, and how conducted.

(Objected to as immaterial.)

Ans. It was an examination with simple and compound microscopes, by daylight and gas-light—by reflected and by transmitted light—with a range of powers from three or four diameters up to the highest which could be used with advantage.

Int. 4. Whether or not you discovered in them any indications, and, if so, what, of their having been written twice over?

Ans. I did not.

Int. 5. Turning your attention now to F. W. P., No. 10, will you state as to the signature to that paper, whether or not you discovered under the microscope any indications that more than one ink or writing material of any description had been used in making it?

(Objected to as leading, and because the witness is not shown to be qualified as an expert on that subject.)

Ans. I did not.

Int. 6. Whether or not, under the microscope, did you discover

any difference apparent in the color of the ink of the various letters or parts of the letters of the signature to F. W. P., No. 10, and, if so, what?

(Objected to as above.)

Ans. I saw a difference in the intensity of the color.

(Counsel for plaintiff says, Have you finished?

The witness says, That explains.

Counsel for plaintiff, If you have finished your answer, very well.

Counsel for respondent requests that this be recorded.)

Int. 7. Whether or not, under the microscope, you saw any and what difference in the color of the ink of the letters or parts of letters in the signature to F. W. P., No. 1? And if you answer affirmatively, will you state whether or not that difference was the same or varied from the difference, you have referred to as to F. W. P., No. 10?

(Objected to as leading, and as otherwise irregular, and as above.)

Ans. I saw a difference in the intensity of the color, such as I saw in No. 10.

Int. 8. Whether or not, under the microscope, you found, as to signature F. W. P., No. 10, and F. W. P., No. 15, anything to
494 show that either of those signatures was or was not traced?

(Objected to so far as respects the competency of the witness.)

Ans. I found nothing to show that either was traced. I did find evidence that neither was traced.

Int. 9. Will you now state as to No. 10, whether or not, under the various lights in which you examined the same, as you have stated in your answer to the third interrogatory, you could or could not discover any traces of the color of violet or of any other color, and, if so, what?

(Objected to as above.)

Ans. I did not observe any stain—any color of violet. The only color—the only other color I observed was the less intense ink stain as before.

Int. 10. What was the highest power of the microscope you used in making these examinations?

(Objected to as immaterial.)

Ans. Spencer's half, with No. 2 eye-glass, was the highest power I used effectively. By "half" I mean "half-inch."

Int. 11. About how many diameters was this?

Ans. Over a hundred.

Cross-examination:

Cross-int. 1. What was that color whose different degrees of intensity you have spoken of?

Ans. Ink color.

Cross-int. 2. Is that the best answer you can give to that question?

Ans. Black-ink color would be a better.

Cross-int. 3. That answer applies to the three signatures, does it?

Ans. To the three signatures, yes.

Cross-int. 4. What component materials did you discover, by the aid of the microscope, in the ink?

Ans. I did not discover any definable particles.

Cross-int. 5. Any knowledge which you acquired by your examination of the materials of which the ink was composed, you may give us.

Ans. That it was a deposit from a fluid.

Cross-int. 6. That's all?

Ans. That's all. I have spoken of the color.

495 Cross-int. 7. The materials of which the paper was composed, and the difference of their absorbent powers, please state.

Ans. Fibres. I did not experiment on their absorbent powers.

Cross-int. 8. State the examination which you made of the writing in the body of those instruments, under the microscope.

Ans. My attention was not particularly directed to that.

Cross-int. 9. Then if I understand you rightly you did not examine, under the microscope, the writing of the body of the instrument.

Ans. I made various examinations of the writing of the body of these instruments, but not with special reference to evidence.

Cross-int. 10. When did you first see these papers?

Ans. I first saw these papers yesterday.

O. W. HOLMES.

JUNE 1, 1867—11.30 a. m.

Deposition of John C. Crosman.

John C. Crosman, of the city of Boston, aged about sixty-three years, being duly sworn, testifies as follows:

(Counsel for plaintiff states, on producing this witness, that his examination is made de bene esse, and without waiving any objection to the testimony offered by the respondents in relation to the genuineness of the signature Sylvia Ann Howland to the papers produced in this cause, marked F. W. P., 10, and F. W. P., 15. Counsel for respondents, not waiving any right, are ready to proceed with the examination.)

I am the same Mr. Crosman whose testimony has been already once taken in this case.

Int. 1. State whether or not you are acquainted with the effect of a violet color in photographing an object.

(Objected to for want of qualification in the witness and want of discrimination in the question.)

Ans. I am acquainted with the effect of photographing violet colors.

Int. 2. Where the object, or some portion of the object to

496 be photographed, is of a violet color, how will such object, or such part of the object of violet color, take or appear in the photographic print?

Ans. It will depend a little upon the manner in which the photo-

graphing is done; but in ordinary cases, in all ordinary cases, the violet will appear nearly or quite white; that is, will not take at all.

Int. 3. Under what circumstances, or by what manner of photographing, can any and what other result be obtained?

(Objected to as above and as immaterial.)

Ans. If the photograph is made quickly and the developing is done lightly, the violet color will appear a little more distinctly than if the lighting or photographing was done less rapidly, and the developing done more fully or completely.

Int. 4. Please look at plates marked Crosman, F. W. P., and numbered respectively 1, 2, 4, and 5, and at the diagram or scale on one of the plates marked Crosman, F. W. P., 3, now shown you by the examiner, and state what they are, and by whom they were prepared, if you know, and what they show or illustrate.

(Objected to as immaterial and inadmissible in this stage of the evidence.)

Ans. The scale or diagram marked Crosman, F. W. P., 3, was made by myself, with a violet-colored pigment of varying degrees of intensity, from pale to brilliant—rather brilliant. The photographs F. W. P., 1 and 2, are prints from a negative of said scale or diagram, said negative having been made by transmitted light coming through said diagram. The scale of enlargement was about six times linear. The print F. W. P., 1, is on albumen paper. That on F. W. P., 2, is plain paper. The negative on which these two prints were made was developed rather lightly, very much more lightly than any of the work presented in the book marked F. W. P., R. vs. M. The prints on F. W. P., 4, and F. W. P., 5, the first on albumen, and the second on plain paper, were made from a negative which was developed more fully than the other above described or first named. The scale was prepared for photographing by myself. The photographs were made by Mr. Black. I omitted to say that the negative from which the prints F. W. P., 4 and 5, were made, although developed more than the negative from which F. W. P., 1 and 2, were made, was still less developed than the prints or negatives in the book marked F. W. P., R. vs. M. These prints illustrate the
497 well-known fact that violet color appears but faintly in photographs, and also that the more a negative is developed, the more entirely all presence of violet color disappears.

Int. 5. State what you mean by the word "develop" as used by you, and whether or not it has any and what meaning in the art of photography.

Ans. I mean by the word "develop" the operation which takes place on the sensitized coating of the photographic plate after it comes from the camera, which operation gives to the lighted parts of said plate a dark, opaque character, instead of the light or semi-transparent coating which before existed. By the word "develop" is meant imparting to the sensitized coating the condition necessary for printing.

Int. 6. You have said those photographs were made by Mr. Black. State what knowledge you have of this.

Ans. I was present at the time of taking the negatives and of the development, during the whole time of each operation.

Int. 7. Please look at R. C. P., Book 1, Volume 1, Plate 12, and at the plates marked Crosman, F. W. P., 4 and 5, and state, to the best of your knowledge, what is the comparative development of the negative from which they were printed.

(Objected to as above.)

Ans. I have no doubt that the photograph on Plate 12 was developed very much more, or the negative, rather, from which it was printed, was developed very much more than the negative from which the prints marked Crosman, F. W. P., 4 and 5, were made, were printed. I judge so from the whiteness and clearness of the paper.

Int. 8. In photographing an object of violet color, what effect, if any, would such increased development of the negative as you refer to in regard to the negative of the photographic print on page 12 aforesaid, have in taking such object?

Ans. It would have the effect that I just now stated, to leave no trace of the violet color.

Int. 9. What, if any color, would appear?

Ans. All colors, except violet, blue, and indigo. Those would not appear, unless largely or more or less mixed with other color or colors.

Int. 10. My question was intended to be, what appearances upon the photographic print, where a negative was thus developed, if the object photographed was of a violet color, would there be?

Ans. There would be the color of the paper and the stain
498 which the whole paper, the whole sheet of paper, would receive from the various operations of toning and washing.

Int. 11. How would the object of violet color itself appear upon the photographic print, if at all, under the circumstances stated?

(Objected to as leading and as above.)

Ans. It would take a very intense color of violet to appear at all, if the developing was high.

Int. 12. If shades of violet similar to those in the original, from which Crosman, F. W. P., 4 and 5, were taken, had presented themselves, or been present in the original of photograph on said Plate 12, having regard to the development of the negatives from which these three photographs were taken, in which would the photographic representation of the violet best appear, if at all?

(Objected to for the incompetency of the witness and want of discrimination in the question, and as assuming what does not appear, to wit, an acquaintance with several necessary facts, and for vagueness in terms, and as immaterial.)

Ans. If at all, it should appear best in the photographs Crosman, F. W. P., 4 and 5. This is my judgment from the appearance of the photograph on page 12.

Int. 13. Please look at the bundles or packages now shown you by the examiner, and marked R. vs. M., F. W. P., and numbered respectively from 7 to 39, inclusive, and state, with reference to Book R. vs. M., F. W. P., what those bundles or packages are.

Ans. They are identical with the contents of the book R. vs. M., F. W. P., each of them.

Cross-examination de bene:

Cross-int. 1. Where did you procure the violet which you used for Crosman, F. W. P., 3?

Ans. I obtained it from a gentleman of the name of Dunmore, who lives next door to Mr. Sharp, an artist in Cambridge. I sent my palette out by Mr. Dunmore, and requested him to ask Mr. Sharp to put a little violet color on to my palette. I did this for the reason that Mr. Sharp was deemed a good colorist, and has painted flowers very much for many years.

Cross-int. 2. And you expected him to furnish it pure?

499 Ans. I expected Mr. Sharp would send me a violet tint which a majority of people would agree upon as a true representation of a violet color. I don't understand what the question or word "pure" means. Violet color is not a pure color, but is mixed more or less with red.

J. C. CROSMAN.

UNITED STATES OF AMERICA,
District of Massachusetts:

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States appointed special examiner in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., as by a certified copy of said order hereto attached appeareth, do certify that I caused to appear before me, on the days set against their respective names, and all in the year of our Lord one thousand eight hundred and sixty-seven, the following-named persons, witnesses on behalf of the plaintiff in the above-entitled case, to wit:

John A. Whipple, on the twenty-seventh day of May.
Frank Rowell, on the twenty-eighth and twenty-ninth days of May.
Charles V. Woerd, on the thirtieth day of May.
O. W. Holmes, on the first day of June.
John C. Crosman, on the first day of June.

And that they having been by me severally and duly sworn to testify the truth, the whole truth, and nothing but the truth relating to the cause for which their testimony was taken, their several answers to the interrogatories proposed to them were by me reduced to writing in their presence, and by them subscribed in my presence, in the presence of the counsel of both parties, and are hereto annexed, and that both parties were present during the examination by their respective counsel.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the city of Boston, this third day of June, in the year of our Lord eighteen hundred and sixty-seven.

FRANCIS W. PALFREY,
Special Examiner.

500 *Exhibit.—Deposition of Electa Montagu.*

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

On this twenty-fourth day of August, 1865, at New Bedford, in the county of Bristol, the aforesaid deponent personally appeared before me, Lemuel T. Willcox, a justice of the peace within and for said county, and was duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth relating to the cause for which this deposition is taken, and was then examined by me and her testimony taken in writing by me as above written, and carefully read by me to the said deponent, and subscribed by her in my presence. This deposition was taken at the request of Thomas Mandell, to be used in a proceeding for the probate of a will and codicil, pending between Thomas Mandell and Hetty H. Robinson. The reason for taking the same being that the witness is so sick as to make it probable that she will not be able to attend at the trial.

The said Hetty H. Robinson was notified and did attend the taking of this deposition, which is, by agreement of parties, to be left open and off file, and same effect as if duly closed and filed.

LEML. T. WILLCOX,
Justice of the Peace.

I, Electa Montague, of New Bedford, nurse of Miss Sylvia Ann Howland for the last six years, being there nearly all the time—that is, absent only six or eight weeks during the whole time—aged sixty-one, in answer to the following interrogatories, on oath depose and say:

Int. 1. How did Miss Howland treat you?

Ans. She always treated me very kindly.

Int. 2. Did you use to read to her during the last two years of her life?

Ans. I did, within the last two years; but during the last year my eyes failed me and she had another person read to her.

501 Int. 3. What were some of the books read to her during the last two years of her life?

Ans. She had a great many books read to her; she was very fond of travels; she liked Frederika Bremer's works, and was fond of Mrs. Stowe's books, and others I can't seem to remember, but I will think of them.

Int. 4. Did you go down to the Round Hill farm with Miss Howland when she went in June, '63?

Ans. Yes, sir, I did; she never went down there without me.

Int. 5. How long did you and she stay there that time?

Ans. We were down there most three months; we didn't come back till fall.

Int. 6. Did she use to be read to down at the Round Hills?

Ans. Yes, indeed.

Int. 7. Do you remember that Bayard Taylor's travels were read to her?

Ans. Yes, indeed; them she was delighted with; she was very much delighted with them.

Int. 8. Did she use to talk about the books that were read, I mean within the last two years?

Ans. Yes.

Int. 9. How did she talk always?

Ans. Speak of them, and like to hear them talked about, and so on.

Int. 10. Did she talk about what she had heard read to her?

Ans. Yes.

Int. 11. How was she when down at the Round Hills in 1863? I mean at the time her will was made.

Ans. She was just as bright as anything.

Int. 12. Do you remember witnessing how calm and thoughtful she was then? What did you notice then?

Ans. I did notice it. She was just as calm and thoughtful—she wanted everything done that could be done. Oh, yes; she was just as thoughtful as could be.

Int. 13. What did she say about it?

Ans. She didn't want I should know anything about it, as questions would be asked me. She talked it over afterwards. She
502 didn't want anybody to know anything about it; till at last she was going to have a codicil written, then she didn't hesitate to have it spoken of.

Int. 14. At the time the will was signed at the Round Hills, were you in the room?

Ans. No; I was not.

Int. 15. On the day the gentlemen came down there did she tell you anything; if so, what?

Ans. She said, I am going to have some writing done and I want you to make the preparations, and when you have done that you go out.

Int. 16. What preparations did she tell you to make?

Ans. Of course she couldn't help herself, you know. I could get the ink and all the things ready and then I was to go out.

Int. 17. Who was in the room when she told you this?

Ans. I guess nobody, unless Mrs. Brown, who was abed all the forenoon; so it was arranged before she got up.

Int. 18. Do you remember seeing Miss Howland writing on the board that day, before the gentlemen came down?

Ans. Yes, indeed; she wrote so as to get her hand in, so she could write; oh, yes, indeed.

Int. 19. What, if anything, did she say to you next morning after the will was made?

Ans. She said but very little the next morning about the will, but when she came to have the codicil written she didn't hesitate at all to talk about it.

Int. 20. What was it she said?

Ans. And she said how glad she was that she had done it, and seemed as pleased about it as possible; she didn't want anything known about it until after she had written the codicil.

Int. 21. In the morning, after the will, did she say anything about the people on the Neck knowing it; if so, what?

Ans. Yes; "I suppose the folks on the Neck will all know about it." Then when I told her the folks on the Neck did not mistrust anything about it, then she said, How glad I am they don't know anything about it.

Int. 22. When she supposed the folks on the Neck knew about it, what did she say about what she had done?

503 Ans. When she came to find out that the folks on the Neck did not know anything about it, then she was as pleased as could be.

Int. 23. Did she ever tell you she had left anything to you; if so, what did she say?

Ans. She did.

Int. 24. Please tell us what she said, if anything, about the strength of the will.

Ans. I can: Edward Robinson won't dare to put down such a man as Dr. Bigelow. This she repeated several times, and said it at different times when she was comfortable; she said Edward Robinson could not put down so great a man as Dr. Bigelow.

Int. 25. How did she talk about the codicil before it was made?

Ans. It was sometime before she got her mind made up about it—some little time; I guess it was two months.

Int. 26. After she signed the codicil, who had to dress her?

Ans. Oh, I did.

Int. 27. While you were dressing her, during two or three weeks after the codicil was signed, did she say anything about it?

Ans. Yes, oh, yes; I guess she did; she talked about it a great deal; she was so pleased to think it was done; I can't think, just now, the words.

Int. 28. When the gentlemen were coming to arrange about the codicil, who arranged the room for the business?

Ans. I did; oh, Miss Howland wanted me to, of course.

Int. 29. Did you hear it read? Please tell us all you heard about the reading of the codicil to Miss Howland.

Ans. I did not hear the codicil; the reason why, because I was not permitted to be in the room. When it was over with, then I heard it talked over a good many times. I went into the other room.

Int. When you went out of the room into the entry, could you hear?

Ans. Oh, yes; I could have heard every word if I had been a mind to. Then I went into the other room, so that I could not hear. Dr. Bigelow was reading loud as I walked by in the entry.

Int. 31. When she spoke of Mr. Robinson's death, what did she say?

504 Ans. Well, she said—I don't know just what she did say. I know that she was thankful that he was going so soon.

Int. 32. What did she say about Miss Hetty, when she knew of Mr Robinson's death?

Ans. She never spoke of her at all, in any way, only she said, I can't have her to come here; I can't have her to come here.

Int. 33. Do you remember her saying, "Hetty can't do as much without her father?"

(Objected to as leading.)

Ans. Yes; she did.

Int. 33. State just what she did say.

Ans. Hetty Robinson can't do as much without her father as she could with him.

Int. 35. Has Miss Robinson talked with you since the death of Miss Howland?

Ans. No, sir.

Int. 36. I want to refresh your memory a little. Didn't you tell Miss Hetty that nothing would tempt you to do what was wrong?

(Objected to as leading.)

Ans. Yes.

Int. 37. What made you tell her so?

Ans. I didn't think I ought to talk against her aunt on any account whatever, whether she gave me anything or not. I didn't think it would be right for me to say anything against her.

Int. 38. What had Miss Hetty been saying to you when you told her this?

Ans. I am getting tired. I rather not say anything about it.

Int. 39. All the time Miss Howland was going to build the addition to her house, how did Miss Hetty talk to her about it?

Ans. She talked dreadfully to her; she said everything that was unbecoming; she said there was no need of having an addition to the house; there was no necessity of it; she would not sleep there again if she put on an addition; she would go right away; she cried and screamed.

Int. 40. Were you present once, some years ago, when Miss Hetty got her aunt to destroy a will?

Ans. I suppose I was.

505 Int. 41. What did Miss Howland do when Miss Hetty talked so dreadfully to her?

Ans. She told me to lead her out of the room—that she could never see her. She went to the Round Hill that day and never see her again.

Int. 42. Did you ever write to Miss Hetty not to come to Miss Howland's?

Ans. I did; at Miss Howland's request.

Int. 43. What did Miss Howland say about Miss Hetty's coming?

(Objected to.)

Ans. She said she couldn't have her come.

Int. 44. Did you hear her ask Dr. Gordon to write Miss Hetty not to come?

Ans. Yes, sir.

Int. 45. Did she tell him what to write?

Ans. I don't remember.

Cross-examination by Mr. Prescott:

Cross-int. 1. Did Miss Howland name or select the books to be read to her?

Ans. Yes, indeed; oh, yes.

Cross-int. 2. Did she request to be read to, or was it only your plan to amuse her?

Ans. It was her plan to be read to; she liked to be read to; it was really her plan.

Cross-int. 3. Name some of the books she called for.

Ans. Frederika Bremer's writings, Bayard Taylor's, and many such kindred books.

Cross-int 4. Why did not Miss Howland read the books herself?

Ans. Because she wasn't able to.

Cross-int. 5. Did she make any remark about the books read to her, except in answer to some questions or remarks made by you or the person who read to her?

Ans. Oh, yes, she did; she talked about them, and seemed to be interested.

Cross-int. 6. Who read to her after you ceased to read?

Ans. Eliza Brown and, after her, Mrs. Hathaway.

506 Cross-int. 7. At what time in the day was the reading? Was it every day?

Ans. It depended on circumstances; after breakfast and after dinner and tea she liked to hear the reading.

Cross-int. 8. What was the names of the books of Bayard Taylor that you read to her?

Ans. All of those of Taylor's and Frederika Bremer's, and all those kind of books. Bayard Taylor had a good many books.

Cross-int. 9. Who applied to you to go to take care of Miss Howland?

Ans. I was applied to by Mrs. Robinson to be nurse for Mrs. Robinson, and then, after that, for Miss Howland. I was nurse for Mrs. Robinson nearly three years.

Cross-int. 10. Did you continue in the house after the death of Mrs. Robinson?

Ans. Yes; I remained in the house a number of months, and then continued right on as nurse for Miss Howland.

Cross-int. 11. Was not Miss Howland very feeble when she went to Round Hills in 1863?

Ans. Yes, sir; she was very feeble.

Cross-int. 12. Was this soon after she had put the addition to her house?

Ans. No, she had not; it was in contemplation before she went.

Cross-int. 13. Where was her niece, Hetty, when she went to Round Hills?

Ans. She was to home here at Miss Howland's.

Cross-int. 14. Who called your attention to the condition of Miss Howland at the time she made her will in 1863?

Ans. There didn't anybody. I am sure there was no such thought of her not being capable of making her will.

Cross-int. 15. How did you happen to notice her condition at that particular time?

Ans. I couldn't tell you. I am sure there was something on her mind; she knew that she had been sick.

Cross-int. 16. Was her condition any better that day than other days?

Ans. I don't say that it wasn't; she was getting a little better.

507 Cross-int. 17. Can you remember her condition that day better than her condition other days?

Ans. I don't suppose but what I can.

Cross-int. 18. What enables you to remember this day better than other days?

Ans. Because it was the day she made her will and it took up my mind and the minds of the others, such a time as they had in getting the witnesses.

Cross-int. 19. What was the time about the witnesses?

Ans. It was because they were down to the Round Hill and they had to come up here to get the witnesses.

Cross-int. 20. Who were the witnesses?

Ans. Simpson Hart, Dr. Bigelow, Mr. Eliot.

Cross-int. 21. What did Miss Howland write when you got the board for her before she made her will in 1863?

Ans. She wrote on it just as anybody would—she wrote her name.

Cross-int. 22. How long was she writing?

Ans. I shouldn't think it was possible she was writing more than ten minutes, but I don't know.

Cross-int. 23. Did she tell you who were coming down to Round Hill to write her will?

Ans. No.

Cross-int. 24. When did Miss Howland tell you she had left you a legacy?

Ans. She told me not a great while after she made her will. It was some little time.

Cross-int. 25. Did she tell you how much the legacy was, and how much was it?

Ans. I suppose she did—it was five thousand dollars.

Cross-int. 26. How came she to tell you she had left you a legacy?

Ans. She thought I wasn't well, and she thought I would go away, and so she told me this to make it all right; and I think it would have been better for me if I had gone away.

Cross-int. 27. Did she tell you the other provisions of the will?

Ans. No.

508 Cross-int. 28. Before making her will, in 1863, did you hear Miss Howland talk with any person about making her will, after she had made the will?

Ans. No; I didn't.

Cross-int. 29. Was not Miss Howland apprehensive that it would be broken, or tried to be broken?

Ans. Yes.

Cross-int. 30. What caused her this apprehension?

Ans. I think she thought her niece would try to break it.

Cross-int. 31. Did she not tell you that she thought her niece would try to break it?

Ans. Well, I don't know that she said the exact words, but she said as much as to say that Edward Robinson would try to.

Cross-int. 32. Did not you express to her fears that Mr. Robinson would try to break the will?

Ans. I didn't until after the codicil came out, then I did.

Cross-int. 33. What made you fear that Mr. Robinson would try to break the will?

Ans. She knew that he was such a lover of money that he would try to break the will if possible.

Cross-int. 34. How came she to tell you that Edward Robinson would not dare to put down so great a man as Dr. Bigelow?

Ans. I have heard her say that time and again.

Cross-int. 35. Did you ever witness a will of Miss Sylvia Ann Howland's?

Ans. No; I never did.

Cross-int. 36. Did you ever witness a will of Miss Hetty H. Robinson? When was it?

Ans. I should think I had. I shouldn't dare to tell you. I should think it was in the winter of 1863, but shouldn't dare to say.

Cross-int. 37. Was there not an agreement between Miss Howland and her niece Hetty to make wills in favor of each other?

(Objected to.)

Ans. I don't know of any such agreement.

Cross-int. 38. Had Miss Howland any unkind feeling towards her niece, Hetty H. Robinson?

Ans. She had.

Cross-int. 39. Was there ever any quarrel between them, to your knowledge?

509 Ans. I hardly know what to say; but there wasn't the feelings there ought to be.

Cross-int. 40. Was not Miss Howland very feeble, both in body and mind, during the last two years of her life?

(Objected to.)

Ans. She was capable; but during the latter part of her life she didn't always seem just as she used to. I mean within five or six months of her death. At times she seemed as bright as ever.

Cross-int. 41. Did she not take a great deal of medicine, laudanum opiates?

Ans. Well, she took some—she took some to be sure, but not a great deal.

Cross-int. 42. Were the medicines, not used, taken away after her death? What became of them?

Ans. I guess there were some left in the closet. I don't know what did become of them

Direct resumed by Mr. Stetson :

Int. 46. What newspaper did Miss Howland take, and was it read to her?

Ans. She took the Boston Journal, and it was read to her.

her
(Signed) ELECTA × MONTAGUE.
mark.

Witness :
LEML. T. WILLCOX.

510 *Exhibit.—F. W. P.*, 23.

NEW BEDFORD, *April* 6 1867.

My Dear Sir—

I cant imagine how I can be of any service to Miss Robinson as a Witness—nor upon what topic you propose to examine me.

It will be very difficult for me to attend in Boston next. I am engaged with Gov. Clifford in a cause which will occupy us during all of the week. If possible, postpone the consideration of my evidence until—say—a week from Wednesday, and in the mean while I shall endeavor to see you.

Yours truly
WM. W. CRAPO

S. BARTLETT, Esq
Boston.

Plaintiff's exhibits not printed.

Signatures.

"F. W. P., 19," assignment of mortgage, signed Sylvia Ann Howland, dated April 11, 1862.

"F. W. P., 20," assignment of mortgage, signed Sylvia Ann Howland, dated June 1, 1864.

"F. W. P., 21," assignment of mortgage, signed Sylvia Ann Howland, dated Sept. 10, 1864.

"F. W. P., 22," assignment of mortgage, signed Sylvia Ann Howland, dated Dec. 23, 1864.

"Spear, F. W. P.," numbered 45, 10, 5, 6, 8, 20, 24, 26, 27, 29, 33, 34, 35, 39, 40, 41, 43, 44, 48, 49, 52, 54, all circulars signed by Joseph B. Spear, dated Boston, 1866.

511 "Walker, F. W. P.," numbered 623, 633, 555, 579, 575, 623a, 656, 679, 670, 669, 582, being requisitions and receipts signed by C. A. Walker in Sept., Oct., Nov., 1860, and in Jan., Feb., 1861.

"Adams, F. W. P.," numbered 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101, being checks of John Q. Adams, one dated 1825, six dated in 1827, four dated in 1828, and one dated in 1829.

"Fairbanks, F. W. P.," being checks numbered 205, 114, 272, 311, 312, 370, 422, 706, 740, 747, 619, 1,423, 2,191, 1,660, 355, 2,203, 2,365, 822, 843, 1,347, 1,583, 1,682, 1,837, 1,838, 2,021, 2,061, 1,860, 2,150, 2,074, being checks signed by Stephen Fairbanks, all

except two bearing date Jan. 1, 1866, and those two dated Jan. 2, 1865, and July 1, 1866.

"Swett, F. W. P.," being checks signed by Sam'l A. Swett, number 12, dated March, 1866; numbers 29, 30, 34, 35, 36, 37, dated May, 1866; numbers 38, 39, 41, 46, 48, 57, dated June, 1866; number 127, dated October, 1866; numbers 143, 144, 152, dated November, 1866.

"Wilde, F. W. P.," numbered 1, 3, 4, 5, 6, 8, 11, 13, 14, 17, 19, 25, 27, 29, 35, 44, 52, 56, 59, 60, being blank writs and summons of the supreme judicial court for the county of Suffolk, commonwealth of Massachusetts, and signed by Geo. C. Wilde, clerk.

"Palfrey, W. S. D.," being checks signed by F. W. Palfrey. numbers 159, 170, 171, 174, are dated January, 1866; number 163 is dated February, 1866; numbers 206, 214, 216, 218, 226, are dated April, 1866; numbers 238, 246, are dated May, 1866; number 260 is dated June, 1866; numbers 265, 270, 271, 274, 277, 279, 282, 285, are dated July, 1866.

Tracings.

"F. W. P., 1 X," "F. W. P., 10 X," "F. W. P., 15 X," are tracings of signatures of Sylvia Ann Howland to papers F. W. P., 1, 10, 15.

"F. W. P., R. C. P.," 9, 15, 18, 24, 32, 36, are tracings from the signatures of Sylvia Ann Howland on bills of sale bearing similar numbers.

The above tracings are referred to in the depositions of Mathiot nd Crosman.

512 Photographic illustrations.

Books marked "R.vs. M., F.W. P.," and "R. vs. M., F. W. P.," 2, 3, 4, 5, 6.

Packages marked "R. v. M., F. W. P.," and numbered respectively from 7 to 39, inclusive, each package containing duplicate photographs of those found in the books.

Oiled rider marked "F. W. P., George Mathiot," referred to in Mathiot's deposition, and placed in the pocket on the cover of the book marked R. v. M.

Rider, "F. W. P., Photograph B."

Plate, "F. W. P., Photograph C."

The above referred to in the deposition of Morse, and placed in pocket as above.

Plate, "F. W. P., Photograph D," referred to in the first deposition of Crosman, and placed in pocket as above.

Plates, "Crosman, F. W. P," 1, 2, 3, 4, photographs of violet tint referred to in the second deposition of Crosman, and placed unattached at the end of Book "R. v. M., F. W. P."

All the above exhibits are placed on file.

F. W. P., Photograph A,
" Rider A,
" Photograph B, No. 2,
" Rider B.
} In pocket.

A UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Francis W. Palfrey, esquire, by order of the circuit court of the United States appointed special examiner to take the testimony of such persons as might be called as witnesses by the plaintiff in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et al., in said circuit court, as by a certified copy of said order hereto attached appeareth, do certify that the depositions of Keziah R. Price, Electa Montague, Peleg Howland, Edward S. Taber, Hetty H. Robinson, Oliver Prescott, Louisa H. Thompson, Edward H. Green, Virginia R. T. Gerrish, George H. Morse, Thomas C. Mullin, Joseph A. Willard, Charles French, William H. Eaton, William W. Crapo, John A. Lowell, George Pye, George Mathiot, John C. Crossman, Louis Agassiz, Joseph B. Spear, Clement A. Walker, John Q. Adams, Charles E. Stevens, Samuel W. Swett, George C. Wilde, John A. Whipple, Frank Rowell, Charles V. Woerd, and O. W.

B Holmes, hereto attached, were taken by me by virtue of the said order, and at the times and in the manner set forth in the several certificates to the same appended.

I further certify that the papers and paper writings hereto attached, marked F. W. P., and numbered from 1 to 23, both inclusive, also one marked F. W. P., 22, Crapo.

Also, several marked Spear, F. W. P., and numbered 45, 10, 5, 6, 8, 20, 24, 26, 27, 29, 33, 34, 35, 39, 40, 41, 43, 44, 48, 49, 52, 54.

Also, several marked Walker, F. W. P., and numbered 623, 633, 555, 579, 575, 623a, 656, 679, 670, 669, 582.

Also, several marked Adams, F. W. P., and numbered 12, 49, 83, 58, 51, 80, 7, 20, 84, 24, 54, 101.

Also, several marked Fairbanks, F. W. P., and numbered 205, 114, 272, 311, 312, 370, 422, 706, 740, 747, 619, 1,423, 2,191, 1,660, 355, 2,203, 2,365, 822, 843, 1,347, 1,583, 1,682, 1,837, 1,838, 2,021, 2,061, 1,860, 2,150, 2,074. Also, one marked Fairbanks, dividend, 41, F. W. P.

Also, several marked Swett, F. W. P., and numbered 29, 30, 34, 35, 36, 37, 38, 39, 41, 46, 48, 57, 127, 143, 144, 152.

C Also, several marked Wilde, F. W. P., and numbered 1, 3, 4, 5, 6, 8, 11, 13, 14, 17, 19, 25, 27, 29, 35, 44, 52, 56, 59, 60.

Also, three tracings marked F. W. P., and numbered 1 X, 10 X, 15 X.

Also, six tracings, marked F. W. P., R. C. P., and numbered 9, 15, 18, 24, 32, 36.

Also, six books, marked R. vs. M., F. W. P., one not numbered, the others numbered 2, 3, 4, 5, 6.

Also, thirty-three packages, marked R. vs. M., F. W. P., and numbered from 7 to 39, both inclusive.

Also, plate, marked F. W. P., Photograph A.
rider, marked F. W. P., Rider A.
rider, marked F. W. P., Photograph B.
plate, marked F. W. P., Photograph B, No. 2.
rider, marked F. W. P., Rider B.
plate, marked F. W. P., Photograph C.
plate, marked F. W. P., Photograph D.
plates, marked Crossman, F. W. P., and numbered from 1 to 5, both inclusive.

Rider, marked F. W. P., George Mathiot, are the same papers, paper writings, tracings, books, packages, plates, and riders that were produced at the taking of the depositions herein specified,
D and that are therein mentioned and referred to.

I further certify, that by reason of the number of the said exhibits, their variety of form, the large size of some, and the delicacy of others, and for the convenience of court and of counsel, I return the papers, paper writings, and tracings herein mentioned, attached to the aforesaid depositions, by putting the whole into a box, sealing up the same, and personally returning the said box so sealed into the custody of the clerk of said court, and I personally return the books, packages, plates, and riders herein mentioned into the custody of the said clerk.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, at the said city of Boston, this twentieth day of July, A. D. 1867.

FRANCIS W. PALFREY,
Special Examiner.

513 Circuit court of the United States, Massachusetts district.—In equity.

HETTY H. ROBINSON, complainant, *vs.* THOMAS MANDELL *et al.*, respondents. } Respondents' depositions and exhibits.

514

515 THURSDAY, *Aug.* 30.

Deposition of Simpson Hart.

I, Simpson Hart, of New Bedford, in county of Bristol, and State of Massachusetts, on oath say, that I am aged sixty-one years. I knew Sylvia Ann Howland. I knew her fifty years. I have, at her request, witnessed three wills certainly, perhaps four.

(Testimony objected to as incompetent.)

Int. 1. Do you know Miss Hetty Robinson, and did you have a conversation with her in reference to the will of her aunt, in July, 1865.

(Objected to as incompetent.)

Ans. I do know her. I had a conversation with her about that time. I cannot fix the date. I think not long after the funeral of her aunt.

Int. 2. If anything was said about Ruth Howland in that interview, state what it was—anything said by Miss Robinson.

(Objected to for form and substance.)

Ans. I think her name was not mentioned. I think she called her her grandmother. I think she said it was strange her grandmother was not mentioned in the will. I knew that she referred to Ruth Howland, the widow of Isaac Howland. I knew the relationships of the family.

Int. 3. In the course of that conversation was anything said in

relation to any contract or agreement between Miss Howland and Miss Robinson? If so, state what.

(Objected to for form and substance.)

Ans. I do not recollect of anything.

Int. 4. How came you there?

(Objected to as incompetent.)

Ans. Miss Robinson sent word for me to call upon her.

Int. 5. How long did the conversation last?

(Objected to.)

Ans. It might have been half an hour.

Int. 6. Was the will the topic of conversation all that time? The will of Miss Howland of course I mean, which was admitted to probate afterwards.

(Objected to for form and substance.)

Ans. I think it was principally.

516 Cross-examination:

(Cross-interrogatories and cross-examination by Daved Thaxter, esq., of counsel for complainant.)

I am brother-in-law to Thomas Mandell, and uncle to Edward D. Mandell. The mother of Edward was my sister. There is no other Simpson Hart in New Bedford that I know of.

(The complainant puts the following questions de bene esse, and without waiving any objections made by them heretofore and reserving all their rights.)

I had but a slight acquaintance with Miss Robinson. I had known her slightly for many years. The only particular interviews I ever had with her was on a passage to New York once, when she went with me at her father's request. I had more intercourse with her then than I had before or since. I have no personal knowledge as to who sent for me at the time of which I testified. The word was left at my house. At this interview a gentleman to whom Miss Robinson introduced me as Mr. Greene was present, and he was the only person, except a servant in and out. I think I was asked about the circumstances of the execution of the will. I understood that I was inquired of because I was one of the witnesses to the will.

Int. 7. Whether anything occurred or was said on your arrival at Miss Robinson's house, which led you to suppose you were not expected? State what was said on that point, if anything.

(Objected to for form and substance, and not interrogating to any new matter open in cross-examination.)

Ans. No, sir; I do not recollect anything being said on that subject.

SIMPSON HART.

517 WEDNESDAY, 11 A. M., *Aug.* 29, 1866.

Deposition of Electa Montague.

I, Electa Montague, of New Bedford, in the county of Bristol, State of Massachusetts, aged sixty-two years, on oath say, that I knew Sylvia Ann Howland and Hetty H. Robinson. I went to live with

Sylvia Ann Howland in August, 1856. I was there when she died. I was there six weeks at the time of my first being there. I went there again in November, 1859, and took care of Mrs. Abby Robinson till she died, Feb. 20, following; then, after the 1st of March of same year I was with Miss Sylvia Ann Howland. I took care of her. I staid with her most of the time till she died, July 2, 1865. I was away once four weeks, and two or three times two weeks, at a time. I was her nurse. I was with her almost entirely my whole time.

Interrogatories by counsel for respondents:

Int. 1. Soon after death of Mrs. Abby Robinson, state whether you heard any conversation between Sylvia Ann Howland and Miss Hetty H. Robinson about a will.

(Objected to as incompetent.)

Ans. I did; within two months of the time.

Int. 2. What it was.

(Objected to as incompetent.)

Ans. I could not tell what it was. I heard them talking. She wished her aunt to make a will. Miss Robinson was very anxious that Sylvia should make a will. At times, it would worry her aunt very much to have her talk so much about her making a will. One time Miss Robinson was talking to her aunt, and it always excited her so much that I said to Miss Robinson, Why do you trouble your aunt so much? You will surely be well enough off, if she don't make a will, I said; and why do you trouble her so? She said,
518 that she wanted it given to her; for she had had the promise of the property. Her grandfather had promised it to her, and her mother had promised her hers, which she had, and her father had got it, and she couldn't have it, and she wanted it given to her, she said. Then she spoke of a will that was "trusteed." She said she was no longer a child, but was capable of taking care of it herself. She wanted it given to her. From that time, till the will was signed, they frequently had conversations about it, and Miss Robinson was very anxious that it should be accomplished; always when they had these conversations it excited Miss Howland, and made her feet very nervous, and affected her very much. Sometimes there was so much said, more than once, she asked me to lead her out of the room so she could be away from Miss Robinson. After the will was made, Miss Robinson wanted Miss Howland to sign it, and she made reply that she was not able. She would say, Then you never will be able; you can do it now as well as ever. This was talked a great many times.

(Complainant's counsel object to all that part of above answer that does not state conversations called for as irresponsive and otherwise incompetent. This objection was not made until the answer was finished. Counsel for complainant desire note made that he expressed an intention to have objection noted when answer was finished, during its progress, which is true; but at request of respondents it is added, and it is a matter of fact that such intention was first expressed prior to the last sentence only.)

Int. 3. Whether or not you heard Miss Robinson say what became of her mother's property? If so, give a narrative of all that you heard.

(Complainant's counsel object to above as incompetent.)

Ans. I did hear say. She said her father had got it from her. She said she felt very bad about it. She thought it was very cruel in her father to do it. Miss Robinson and her father had many talks about it. Miss Robinson at times got quite excited about it. (Objected to by complainant as not responsive, and otherwise incompetent.) Miss Robinson also told me she went down to Boston to consult Lawyer Loring about getting it from her father. She found she could not hold it, and was obliged to give it up to her father; that her father, she said, gave her the house on North Second street that they used to live in. At that time, she talked very hard against her father. I cannot tell the words, but she was very much displeased with her father.

519 (Objected to the last as irresponsive and incompetent.)

Int. 4. Whether or not she said anything as to the feelings of a father?

(Objected to by complainant as above.)

Ans. She said he had not the feeling of a father; if he had, he would not take that property from her which was her mother's.

Int. 5. Whether she said anything about Mr. Thomas Mandell's connection with the matter of her mother's property?

(Objected to.)

Ans. She said that Mr. Mandell had not done his duty; if he had, her father never could have got the property.

Int. 6. State whether she said anything about Charles R. Tucker's action in relation to her own will, and, if so, state what it was.

(Objected to.)

Ans. Miss Robinson did speak of Charles Tucker, that she consulted him in making her own will, and he advised her to give five or ten thousand dollars, I can't say which, to her father; she said she thought that was altogether too much for her to give her father with the property he had got, and all her mother's property, except that house. [Miss Robinson got very much displeased with Mr. Tucker.] (Objected to by complainant's counsel as irresponsive and otherwise incompetent.) I recollect her saying she thought Mr. Tucker ought to have known better than to have advised her to give her father so much. I do not recollect other words of what she said about Mr. Tucker.

Int. 7. Whether or not about that time Miss Robinson said anything to you about making a will of her own? If so, state all that she said.

(Objected to.)

Ans. She said to me one day, Will it shorten anybody's days to make a will? She said she wanted to make hers. This was said in the spring months of 1860. She said, I want to make my will so that the Robinsons shan't have anything of it; that if her mother was living, she, her mother, wouldn't want the Robinsons to have any of

her property, and she herself meant that they shouldn't have any of it.

Int. 8. Did she say anything as to her father's having her property; if so, what, and when was it said?

(Objected to.)

520 Ans. It was that spring. She said her father shouldn't have it. She didn't want it to go to the Robinsons.

Int. 9. How frequently did she talk that spring about not letting her father have her property?

(Objected to.)

Ans. Many times.

Int. 10. What did you reply when she asked you if it would shorten anybody's days to make a will?

(Objected to.)

Ans. I told her it would not; that I thought it was a good plan for one to make a will.

Int. 11. During that summer, did you or not hear Miss Robinson say anything about not getting what belonged to her; if so, what?

(Objected to.)

Ans. I have heard her speak as if she was very much wronged because she couldn't get what belonged to her. (Objected to by complainant as irresponsive and otherwise incompetent.) She said her grandfather promised her money, and her mother had promised her money, and they were both dead, and she had got nothing from them, only the house; that she wanted the money, and wanted it in her own hands.

Int. 12. In the early part of your deposition, you have spoken of Miss Robinson's in 1860 urging her aunt to make a will. State whether it was signed by Miss Howland, and when.

(Objected to by complainant as leading, and assuming a fact not proved, and otherwise incompetent.)

Ans. It was signed by Miss Howland in 1862.

Int. 13. What was said between Miss Robinson and her aunt on that day before signing, if anything?

(Objected to.)

Ans. Miss Robinson wanted the will signed. She was talking of going to New York, and said that she should not go until the will was signed, and insisted upon her aunt's doing it then, saying, You will never be better able to do it than now; you can have it done now as well as ever. Then her aunt gave her consent to have it done, and Miss Robinson went down to Mr. Peleg Howland's store; she said she was going; and a servant man, Mr. Brownell, was

521 sent to Mrs. Price's, and she asked me to be one of the witnesses. I mean Miss Robinson spoke to me. Miss Howland never spoke to me about it.

(Complainant objects to all that part of the answer not responsive to the question.)

Ruth Howland was at Sylvia Ann Howland's house in the fall of 1860. I remember to have heard Miss Howland talk with her. Ruth

left the last of November or the first of December. She was there three or four weeks.

Int. 14. Did you hear any conversations between Ruth Howland and Miss Robinson at this time, in relation to Sylvia Ann Howland; if so, what were they?

(Objected to.)

Ans. I did; I heard some talk about Sylvia Ann making her will. Miss Robinson thought she ought to make one; she wanted the property given to her; she didn't want it trusteed; I heard her talking to Ruth about that.

Int. 15. If she wanted anything of Ruth in relation to it, what was it; what did she say?

(Objected to.)

Ans. She said that she was no longer a child; she wanted the property herself; she did not want it trusteed to her.

Int. 16. If she wanted Ruth to do anything about it, what was it?

(Objected to as leading and otherwise incompetent.)

Ans. I won't be positive, but I think she wanted Ruth to talk with her about it, to encourage her. I won't be positive.

Int. 17. How frequently did you hear Miss Robinson urging her aunt to make a will, as you have stated, from the beginning in the spring of 1860 up to the signing in 1862?

(Objected to by complainant for form, and as assuming a fact not proved, and as otherwise incompetent.)

Ans. I cannot tell the number of times; but I presume there never was a month at a time, and I don't know as there was two weeks at a time, that she didn't talk to her about it when they were together. Miss Robinson was away some of the time.

Int. 18. Did you notice any change in the words used by Miss Robinson in urging her aunt to make any will, in the expressions used; if so, what was it?

522 (Objected to by complainant for form and substance.)

Ans. At times Miss Robinson would be very pleasant, trying to win her aunt and coax her—very much so; at other times she would seem very commanding—almost angry that she could not bring her aunt to terms.

(Answer objected to as incompetent by complainant.)

Int. 19. You have said she urged her aunt to make her will; when, if at all, did she urge her to sign it?

(Objected to by complainant for form, as irrelevant, and otherwise incompetent.)

Ans. I could not decide the time, but it was some months before the will was signed.

Int. 20. During all the conversations between Miss Robinson and her aunt to which you have referred, did you ever hear Miss Robinson refer to any contract or agreement with her aunt? If so, state what she said.

(Objected to.)

Ans. No; I never did.

Int. 21. While urging aunt, as you have said, did Miss Robinson

ever refer to her own will, or that she had made one? If so, state what she said.

(Objected to.)

Ans. At one time, before Miss Robinson had made her own will, she was talking to her aunt, and was speaking against her father's having her property, and said she didn't know what she should do with her's; and Miss Howland said, Give it to charitable purposes; I have mine.

Int. 22. While urging her aunt, as you have stated, did she or not ever say that she ought to do so because she, Miss Robinson, had made a will, or words of like effect; if so, what did she say?

(Objected, for form and substance.)

Ans. She never did. I never heard a word that she had made a will, and so that her aunt ought to.

Int. 23. In urging her aunt to write a will, did she say anything, and, if so, what, in relation to her, Miss Robinson, having made a will?

(Objected to.)

Ans. No; she did not.

Int. 24. What time in 1860 did Miss Howland go to Round Hill?

523 Ans. In April, I am sure. She did not stay all night. The next time was about a week or so after. She stayed only during the day at these times, and returned before night. Then say about the 10th or 15th of May we went frequently, staying two or three days at a time. Sometimes we staid four or five days; sometimes a week or nine days. This continued until October of the same year. Her home during this time was on Eighth street, in New Bedford. She had her family there, and the house was kept open all summer. From the middle of May to the 25th of September, I should say she spent about a third of her time at Round Hills. The fore part of the summer Miss Robinson went with us to Round Hills quite frequently, the latter part not so much. Pardon Gray drove us all down in a carriage. I was almost wholly with Miss Howland at the Round Hills that summer.

Int. 25. Explain why you were with her.

(Objected to.)

Ans. Miss Howland was an invalid. She could not walk alone. She wanted some one to walk with her and read to her, and it took most of my time to wait and tend upon her. She always wanted me by her. If she laid down she wanted me to read to her.

Int. 26. State what, if anything, she said to you, if you left her alone.

(Objected to.)

Ans. She would say, How can you leave me alone? I want you to be here with me; and, if I was obliged to go out, then she would say, Call some one to come and stay with me; I don't want to be alone.

Int. 27. What, if anything, did she say to you if you left her with her niece, Miss Hetty H. Robinson?

(Objected to.)

Ans. She has told me many a time that she did not want to be left with Miss Robinson. She said if she seemed clever she never knew what she was going to do, and she would say things to hurt her feelings; and she would say, "She makes me feel so uncomfortable, she has treated me so badly that I can't bear to have her with me alone."

Int. 28. State, according to your best recollection, whether, during those visits to Round Hills, in the summer of 1860, Miss Robinson was left alone with her aunt for any length of time; and what was the longest time, according to your best recollection, she was so left.

524 (Objected to for form and substance.)

Ans. She might have been left with her alone for half an hour, but I doubt whether she was. She was not many times left with her. I know that Miss Howland did not want to be left with her.

Int. 29. On the day Sylvia Ann's will was signed, in 1862, were you with her during the day, or what parts of the day?

Ans. I was with her; but I can only say that I was with her all the time, except, perhaps, half an hour. When she went from her chamber to her meals, I waited upon her down; and when she returned, I went back with her. The tea hour at that time, January, was six o'clock. I took her arm—or she took mine, rather—and I led her down to tea as to all her meals. Miss Howland ate very little, but ate very slowly. She always sat half an hour, and I with her. After she had finished her tea on the day inquired of, the 11th of January, she went back to her room; I led her up.

Int. 30. When you led her up stairs, what did you do, and what did Miss Howland do?

(Objected to.)

Ans. I could not tell for certainty what was done that night; I know what was the usual custom—she always wanted to walk, to have me walk round the room with her.

Int. 31. After having led her up stairs that night, did you or not remain with her; and, if so, how long? State to the best of your recollection.

(Objected to for form and substance.)

Ans. It is impossible for me to state certainly; I have no idea that I left her. I may have been absent down stairs a very few minutes, but I can't think I was.

Int. 32. Have you any recollection of leaving her before Peleg Howland came?

(Objected to for form and substance.)

Ans. No, I have not.

Int. 33. If you left her at any time, did you leave Keziah Price with her or not?

(Objected to for form and substance.)

Ans. I think I did.

Int. 34. Do you recollect Peleg Howland coming in that night?

525 Ans. I do.

Int. 35. Now, referring to the fact of Peleg Howland's

coming in, state whether you have or not any recollection of going out of that room from the time of leading Miss Howland up from tea, as you have stated, to the time of Peleg Howland's coming in.

(Objected to by the complainant as leading, incompetent, and as assuming a fact not proved.)

Ans. I have not any recollection of going out of the room; I may have gone out, but I have no recollection of it.

Int. 36. What is your belief on that point?

(Objected to as incompetent.)

Ans. I have no recollection of going out; my belief is that I was not out of the room.

Int. 37. If you left the room at all after going up from tea, did you leave Miss Howland alone, or with some other person than Miss Hetty Robinson?

(Objected to for form, assuming a fact not proved, and as otherwise not competent.)

Ans. I have no doubt that I left another person; but I cannot say for certainty. Mrs. Price came expressly to devote herself to Miss Howland. She witnessed the will too.

(Answer objected to as incompetent by complainant.)

Int. 38. Did you get the ink for them to sign the will or not?

(Objected to for form and substance.)

Ans. I did. I got it from a table drawer in her room. Pen, ink, and paper were all in that drawer, and were brought together and laid upon the table.

Int. 39. Who, if any one, brought in the will?

(Objected to for form and substance.)

Ans. I cannot remember; I did not; that is all I can say.

(Objected to for form and substance.)

Int. 40. Were there any papers attached to that will when you signed it?

(Objected to for form.)

Ans. I saw none.

Int. 41. Were there or not, to your best recollection?

Ans. I cannot believe there was. (Objected to as irresponsive and otherwise incompetent.) To my best recollection there were none there.

526 Int. 42. Did you see any stitches or not on the paper you signed as witness?

(Objected to for form.)

Ans. I did not.

Int. 43. Did you or not see any thread on the paper you signed?

(Objected to for form.)

Ans. I did not.

Int. 44. When Sylvia Howland was signing her name that evening to the document you attested, how near were you to her?

Ans. I wish that I could recollect everything; but not being expected to be called on, I could not tell. As I always fixed her pen and paper, I have no doubt I stood right by her side; but I could not say.

Int. 45. When Peleg Howland asked, What is this which I am about to sign, what did Sylvia Howland say?

(Objected to as incompetent.)

Ans. She said nothing.

Int. 46. After Sylvia A. Howland went up from tea that night, did she sign any other document except that you signed as witness?

(Objected to for form.)

Ans. She did not.

Int. 47. How long after the will was signed in '62 did Miss Robinson continue in New Bedford?

Ans. About two or three weeks, probably. She went to New York the fore part of February, and came back the last days of April.

Int. 48. After her return, stato whether she said anything about wills; if so, state what.

(Objected to as incompetent.)

Ans. Miss Robinson asked me if her aunt had made a will during her absence. I told her no; not to my knowledge. Then she asked me if I had been there all the time. I told her yes; I had never been away but a very short time at a time. On that same day, before she asked me these questions, she had news that her father was very sick, and wanted her immediate return to New York. She went to New York on Monday, if this day was Saturday, as I think it was.

Int. 49. After the signing, in 1862, how frequently did Miss Robinson return to the house of Sylvia Ann, after absences from town?

(Objected to as incompetent.)

527 Ans. She was backwards and forwards a number of times during that year.

Int. 50. On such returns, state whether she asked you anything, and, if so, what, and how often.

(Objected to as incompetent.)

Ans. On every return she would ask me if her aunt had made a will in her absence.

Int. 51. What reply did you make, if any?

(Objected to as incompetent.)

Ans. I always told her, "No; not to my knowledge." Mr. Robinson, her father, moved to New York in 1860.

Int. 52. Previous to Mrs. Abby Robinson's death, where did Miss Hetty Robinson live, so far as you know?

Ans. At her father's house on North Second street, in New Bedford. Mrs. Abby Robinson was at Miss Sylvia Ann Howland's house on Eighth street about for or five months before her death; that is, before she herself, Mrs. Abby Robinson, died. For a year and a half before her death, she was there most of the time; but for the four or five months before her death, she was there all the time. She spent the two summers before with Miss Howland, at Round Hills, backwards and forwards, as Miss Howland went and returned. While Mrs. Robinson was thus at Miss Howland's, Miss Hetty Robinson slept at her father's house in North Second street, when in

New Bedford. Before Mrs. Robinson's death, Miss Hetty Robinson did not keep any room at Miss Howland's. After Mr. Robinson moved away from New Bedford, Miss Robinson staid till fall, I think.

Adjourned to Thursday, at 9 a. m.

THURSDAY, *Aug.* 30, 1866.

Direct examination resumed:

Int. 53. When you went to Miss Howland's, in 1859, who kept the keys of her trunk; I refer to the hair trunk of hers, in the closet of her bed-room, wherein her papers were kept?

(Objected to as incompetent.)

528 Ans. Mrs. Fally Brownell.

Int. 54. Who had access to this trunk, as far as you know, before Miss Howland's death?

(Objected to as incompetent.)

Ans. Mrs. Brownell; no one else. Miss Howland herself never went to the trunk. When she wanted her papers, she always sent to Mrs. Brownell to come and bring the keys to go to the trunk. Mrs. Brownell was the housekeeper till Miss Howland's death.

Int. 55. Who dealt out the money for household matters?

(Objected to as incompetent.)

Ans. Mrs. Fally Brownell. She got the money from this trunk in the closet. Mrs. Brownell had charge of the household expenses. She always consulted with Miss Howland about what to do. Mrs. Brownell had the sole charge of the keys until Miss Howland's death; no one else had them. Miss Howland never walked alone about her room after I went there; she always required assistance.

Int. 56. After death of Mrs. Abby Robinson, state if you know anything as to any paper or envelope being put into that trunk. If so, state the circumstances.

(Objected to as incompetent.)

Ans. At one time Miss Hetty Robinson came into the room—I think it was about the fall of 1860, but can't fix the time exactly—and asked her aunt, Miss Howland, having at the time a yellow envelope in her own hand, to let Mrs. Brownell put that paper into the trunk for her, Miss Hetty. She always called Mrs. Brownell "Brownell," and so called her at this time. Miss Howland then told me to go down stairs and ask Mrs. Brownell to come up and bring the keys. I went as I was ordered. She came and brought the keys, and Miss Howland asked her to put that paper in the trunk for Hetty. It was put in.

Int 57. Were you or not ever consulted by Miss Hetty Robinson about witnesses to her own will?

(Objected to as incompetent.)

Ans. I was.

Int. 58. Was this document put into the trunk before or after you were so consulted?

(Objected to for form and substance.)

529 Ans. I was consulted before that; I do not think I was afterwards. I think I was consulted about it two or three times; once, a month or two before; and once, about the time the document was put into the trunk.

Int. 59. During the time you were there, from 1859 to the death of Miss Howland, did you ever know any other document put into the trunk?

(Objected to as incompetent and leading.)

Ans. I did not; that is, for Miss Robinson. Miss Howland's papers and receipts were put into the trunk by Mrs. Brownell from time to time.

Int. 60. Did you ever know Sylvia Howland to put any papers into the trunk or take any papers from it, or go to the trunk for any purpose, from the fall of 1859 to the time of her death?

(Objected to as incompetent.)

Ans. No.

Int. 61. Did you ever know anybody to go to the trunk before Miss Howland's death, except Fally Brownell?

(Objected to as incompetent.)

Ans. I did not.

Int. 62. Do you know of the opening of the trunk after Miss Howland's death? If so, state all the circumstances; when, where, and in whose presence.

(Objected to as incompetent.)

Ans. I was sitting in Miss Howland's chamber where she died, I think, for I may be mistaken about being in that room. Miss Hetty Robinson came in and told me to go down and tell Brownell to come up and fetch the keys. I went. Mrs. Brownell came back with me. We all three went to the closet door, Mrs. Brownell holding the keys, Miss Robinson being ahead. The closet door was opened. Mrs. Brownell handed the keys to Miss Robinson and she, Miss Robinson, opened the trunk and took out some papers. I did not stand to see what she did, but as she passed out she had some papers in her hand. This was the day of her burial, after the funeral; I should think about sundown; it was dusky when we went into the closet.

Int. 63. Did any body else take papers, at that time, from that trunk but Miss Robinson?

530 Ans. No.

Int. 64. So far as you know, after Miss Howland's death, was or not that the first time that trunk was opened?

Ans. It was.

Int. 65. State whether Mrs. Brownell said anything while you and she and Miss Robinson were at the trunk, and, if so, what.

(Objected to as incompetent.)

Ans. I do not recollect a word being spoken by any one.

Int. 66. Had or not Mrs Brownell any papers in her hand while you were all at the closet, or as you came away?

Ans. She did not have.

Int. 67. State whether or not Mr. Greene was in the room or at the closet at this time?

Ans. He was not.

Int. 68. State, if you know, where Miss Robinson carried the papers she took from this trunk.

Ans. Into the north chamber. The next morning when I was doing the chamber work in Miss Robinson's room, I saw some papers lying on the bureau, and thought they were taken from the trunk; but that I don't know. I at different times saw Miss Robinson and Mr. Greene looking over papers at the house; that is all I know.

Int. 69. After Mrs. Brownell gave the keys to Miss Robinson at the unlocking of the trunk on the evening of the funeral, what became of those keys, if you know?

Ans. Miss Robinson kept them.

Int. 70. Did you have any keys, and, if so, what keys, and what became of them?

(Objected to as incompetent.)

Ans. I had four keys; one to an attic room and three to closets in the new part of the house. Miss Robinson asked me for them the night of her aunt's burial. It was dusk, and I told her I would get them for her in the morning. In the morning I gave them to her.

Int. 71. State, if you know, whether or not at the time of going to the trunk on the evening of the day of the funeral, as you have stated, Miss Hetty Robinson knew of the will of her aunt of which Mr. Mandell is executor and which has been proved before the judge of probate.

(Objected to as incompetent.)

531 Ans. She did.

Int. 72. State anything said to you by her, Miss Robinson, in relation to the will before the trunk was open, if anything was said.

(Objected to as incompetent.)

Ans. She came where I was immediately after the reading of the will, and said that "We are not capable of taking care of our money; yours is in trust, and so is mine." The will was read about four o'clock in the afternoon. The funeral was about eleven a. m. They returned about one, a little past.

Int. 73. After the reading of the will, did you hear anybody speaking to Miss Robinson about the will, and if you recollect, state what was said?

(Objected to as incompetent)

Ans. I do not recollect to state anything. I can't say that I recollect any one directing their discourse to her. It was talked about by the whole house.

Int. 74. What was done first after the return from the funeral?

(Objected to as incompetent.)

Ans. They had dinner immediately. Mr. Greene and Miss Robinson were there.

Int. 75. If you have heard the complainant, Miss Robinson, speak of her influence and power over her aunt, and what she could or could not do with her, state such conversation, fixing as nearly as you can the time when and place where.

(Objected to for form and substance.)

Ans. In the spring of 1862, at Sylvia Ann's house in New Bedford. She was trying to persuade her aunt to give up riding in a hack, and having a hackman to drive, as she called it, and to have instead a private one-horse carriage, [and she talked very hard to her aunt.] (The clause in brackets objected to by complainant's counsel.) She said she thought it was disgraceful for a person like her aunt to be riding so. She wanted her to have a one-horse carriage, and have her man who worked for her, Frederick Brownell, to drive. [She caused her aunt to shed a good many tears by her talking.] (The clause in brackets objected to by the complainant's counsel.) After this time with her aunt, we were in another room away from her aunt, on the same day, and Miss Robinson then said to
532 me that she should conquer her aunt and get her to ride in the private carriage, for she never did set out for anything that she did not conquer. The expression I have heard her use a good many times when there was difficulty; that she always had brought her under, and that she should succeed, even if she did not at that time.

Int. 76. Was there anything said in this conversation as to the difference of expense between the hack and the one-horse carriage?

(Objected to for form and substance.)

Ans. I have one word more to say first, about the other part. She said she shouldn't give up, she should try again after a little while. I have heard Miss Robinson, when she was talking with her, say that a one-horse carriage would be a great deal less expense.

Int. 77. State anything within your knowledge tending to show the relations between Miss Howland and Miss Robinson, and whether or not Miss Howland stood in fear of Miss Robinson, or was vexed and made nervous by her importunities, or how otherwise. State all you know on that subject-matter.

(Objected to for form and substance.)

Ans. She did stand in fear of her, and would say, "If she is kind and pleasant we never know what she is going to do;" and would say, "How could she be so cruel as to treat me so, when I have done everything in my power to make her happy." Some of this she would say to her, and some when she was away. Miss Howland would say, "I cannot live with her, she treats me so." When Miss Robinson did disobey her orders and treat her unkindly, it did affect Miss Howland very much indeed, made her nervous, caused her sleepless nights, and she could not eat her food Sometimes when we went to the Round Hills, Miss Robinson would want to go, and Miss Howland said it destroyed all her comfort to have her go with her; that she was always bringing up something to make a fuss about.

Int. 78. State whether or not Miss Howland said anything in relation to Miss Hetty being at her house, or visiting at her house, and the reasons, if any, she gave, for having or not having her at her house. State as nearly as you can the times of such conversations.

(Objected to as incompetent.)

Ans. She said she could not have her there; she made her so

nervous that she could not have her in the house; she could not have her any way. She said her health had been very much in-
533 jured by Miss Robinson's unkind treatment to her; and it was not required of her to make her, Miss Robinson, a home. she had been so unkind to her. There were a great many of such conversations in June, 1863—the last time that her aunt ever saw her. [Miss Howland had long felt the necessity of having an addition put to her house, and had decided to put the addition.] (Clause in brackets objected to by complainant as not responsive and otherwise incompetent.) Miss Howland said to her in the morning that she was going to have an addition put on to her house. Miss Robinson immediately said that there was no need of an addition; that there was room enough, and that if she put it on, it was only to accommodate her old nurses; and then she, Miss Robinson, commenced crying because her aunt was going to put on this addition, and sat on the floor, facing her aunt, and cried and bo-hoo-ed right out, so that the man outdoors heard and came in down-stairs, and inquired what was the matter with Miss Robinson, that she was a-crying. She cried and talked upon the floor a long time. She talked very hard, that there was no need of this róom, that she ought not to have it, and said that she would clear one room that she had and give it up to the nurses. Miss Howland bore it just as long as she could, and then she asked me to take her, Miss Howland, out of the room. It was her chamber, her own sick-room. I led her into the north chamber, and shut the door. [Then Miss Robinson commenced clearing this room of hers—the chamber over the kitchen—and carrying her things into the attic; and she carried all her things out of the closet and the bureau into the attic, and said she would go into the attic and sleep, and took a mattress from her old room and carried it there and laid it on her grandfather's old chest that he used to carry to sea, and partly on a trunk that was there. She went up there and slept one night. She told me that she would not sleep in the old chamber over the kitchen again, she would rather sleep in the cemetery. I said, "Very well, if you want to sleep there, go there." She replied, "I shan't go there till I am carried." After sleeping in the attic one night, she came down to her old room and slept there.]

(The clause in brackets is objected to by complainant as not responsive and as incompetent.)

Int. 79. If you know of anything having any tendency to show the effect this interview had upon Miss Howland, please state it.

(Objected to as incompetent.)

534 Ans. It affected her health very much. She never slept hardly any that night. I watched with her. It wore upon her. Her health never was so good after that time. It made her sick. Miss Howland would say, "How could Miss Robinson do so by me—the money was mine; I had a right to put up the addition." From that time she failed, and grew worse as long as she lived. She said many times that she never got over that—such unkind treatment—such talking, too.

Int. 80. State, if you know, whether after this time Miss How-

land did or did not refuse to have Hetty visit the house, and, if you say yea, what, if any, reason she gave for such refusal.

(Objected to for form and substance.)

Ans. She did refuse to have her; said she could not have in the house any one who treated her so unkindly.

Int. 81. Look upon the paper marked A. R. C. P., and say whether that is in the handwriting of Miss Robinson, and whether you received that note from her.

(Objected to as incompetent.)

Ans. It is in her handwriting, and I received it from her.

Int. 82. Look upon the paper marked B. R. C. P., and say whether that is in the handwriting of Miss Robinson, and whether you received that note from her.

(Objected to.)

Ans. It is, and I received it from her.

Int. 83. Look upon the paper marked C. R. C. P., and say whether that is in the handwriting of Miss Robinson, and whether you received it from her.

(Objected to.)

Ans. It is, and I received it from her.

Int. 84. Have you any recollection as to the time those notes were received?

(Objected to.)

Ans. I could not give the dates; it was in July or August of 1863; one I know was in July; it is the one maked C. R. C. P. The one marked B. R. C. P. was received next, and the one marked A. R. C. P. was last received. Miss Howland, Mrs. Price, and myself went to the Round Hills in the afternoon after the trouble between Miss Howland and Hetty of which I have just spoken, in June, 1863.

535 Int. 85. Did you or not ever ask Miss Robinson not to trouble her aunt so, or words to that effect; if so, what did you say and what did she reply?

(Objected to for form and substance.)

Ans. I have many times said to her that she ought not to say these things to make her aunt feel so bad; she would say at times that it was no use to try to please her aunt; that she thought her aunt ought to give up to her. At other times she said that she had sacrificed her health to her aunt, and was not going to do it any more.

Int. 86. Did she ever say whether or not she should succeed or otherwise; and, if so, what?

(Objected to for form and substance. Question waived.)

Int. 87. Did Miss Howland or not say anything in 1862 about Miss Robinson's conduct as to a letter; and, if so, state the whole conversation?

(Objected to for form and substance.)

Ans. Miss Howland said that after Miss Robinson had told her a falsehood about a letter she never could have any more confidence in her when she told her anything.

Int. 88. Whether or not at other times Miss Howland expressed a want of confidence in the truthfulness or otherwise of Miss Robinson?

If so, state what she said, and, as nearly as you may be able, the time and place.

(Objected to for form and substance.)

Ans. There were many times when she expressed that she hadn't any confidence in the truthfulness of her. At one time Mrs. Peleg Howland and myself were going with her, Miss Sylvia, to the Round Hills, and Miss Robinson wanted to go, and Miss Howland did not want her to go, for she, Miss Robinson, wanted to ride a young horse that was there, and Miss Howland was not willing she should ride it. She promised her aunt that if she would let her go, she would not ask to ride that horse. As soon as we got there, before she took her things off, she commenced talking about riding this horse. Miss Howland said that she, Miss Robinson, had said she wouldn't, and added, I cannot have her ride that horse. This was said to me. It made Sylvia Ann feel so bad that she sent Mrs. Peleg Howland down to talk to Miss Robinson and to tell her that she must not ride it.

536 Miss Howland always referred in after life to how she told her a falsehood that day; how she deceived her.

Int. 89. Were you or not present when a will of Miss Howland's was torn, in 1861?

(Objected to for form and substance.)

Ans. I was; the will was torn; Miss Robinson held the will in her hand and would turn over the leaves and tell her aunt where to tear it.

Int. 90. Before this will was torn did you or not hear Miss Robinson saying anything to her aunt about it; and, if more than once, how often, and what was said?

(Objected to as incompetent.)

Ans. I heard her speak to her about it a number of times, wishing it to be destroyed—said she did not want that will, for it was all trusteed; she wanted a different one.

Int. 91. If she urged her aunt to have it destroyed, how many times did she do so?

(Objected to as incompetent.)

Ans. It would be impossible for me to tell the number, but quite a number.

Int. 92. State whether at any time Miss Howland said anything to you in relation to the manner of any provision made for you in her will, the circumstances leading to and attending the conversation, and the time when and place where, and all that was said by you and her.

(Objected to as incompetent.)

Ans. She did speak to me of such a provision. It was in her chamber, at her house in New Bedford. She was lying on her bed. It was in January, 1865. It was in the morning. I spoke to her and told her my health was failing me so much that I wished to leave, and that I felt it was my duty to go away, for I should be sick if I stayed. Miss Howland said, "I can't have you to go; you must stay with me. I can't have you go away, Electa, nohow." I then told her that my friends were dissatisfied with my staying there, and that, if I got

sick by being there, they would not be as willing to assist me and take care of me. Then she said, "I have made a provision for you in my will." The first word I answered was, "If I get it." She said, "It is made as strong as strong can be; Edward Mott
537 Robinson won't dare to put down such a man as Dr. Bigelow." She also spoke of her other witnesses, Mr. Hart and Mr. Eliot, as being such men as couldn't be broken.

Int. 93. What was the state of your health at this time, and how had it been brought about?

(Objected to as incompetent.)

Ans. My health was poor, and it had been brought about by confinement and over-taxation in the care of Miss Howland.

Int. 94. You spoke of Miss Robinson's conquering her aunt. State if you have ever heard Miss Robinson say anything on that subject; and, if so, what. State anything further said on that point.

(Objected to as incompetent.)

Ans. She said she could do it—conquer her aunt and her mother, too—by crying and sobbing; they would think it would make her sick, and would give up to her.

Int. 95. If she said anything about getting into the wine closet or trunks, state what it was.

(Objected to as incompetent, and also as leading.)

Ans. After she got the key, so that she got to the wine closet, she seemed very much pleased, (answer objected to as not responsive,) and said that there was one place more in the house she wanted to go to—that was to that trunk; that she had got to every other place, and she wanted to go there.

Int. 96. Before Mrs. Robinson's death, when she was at Miss Howland's, did she and Miss Howland or not say anything in your hearing about Hetty's coming there? Was anything said by Miss Howland and by Mrs. Robinson about it?

(Objected to as incompetent.)

Ans. I did not hear them talk together about it. I heard Mrs. Robinson talk about it.

Int. 97. State whether or not while you were at Miss Howland's you took your meals at the same table with her.

(Objected to as incompetent.)

Ans. I did always, when she was able to go down stairs.

Int. 98. When Pardon Grey was at Round Hills at Miss Howland's did he or not sit at the table with Miss Howland?

(Objected to as incompetent.)

538 Ans. He did.

Int. 99. State how Miss Howland, while you lived with her, treated you, whether kindly or otherwise.

(Objected to as incompetent.)

Ans. She always treated me kindly.

Int. 100. Whether or not, at any time you lived with her, you ever said anything to her in relation to the making of a will by her, or anything in relation to that subject?

(Objected to as incompetent.)

Ans. I never did.

Int. 101. Did you ever hear any of the other inmates of that family, with the exception of Miss Robinson, talking to Miss Howland about the making of a will?

(Objected to.)

Ans. I never did.

Int. 102. Within your knowledge, recollection, or belief, did you or Mrs Brownell, or any other of the inmates of that household, except Miss Robinson, converse with Miss Howland, or in any way, direct or indirect, attempt to influence Miss Howland as to the making of a will?

(Objected to as to form and substance.)

Ans. I did not; neither do I believe the rest did.

(Answer objected to as incompetent.)

Int. 103. If you knew of any attempt by any member of that household, with the exception of Miss Robinson, during the entire time you lived with Miss Howland, to influence her to make a will in favor of such person or otherwise, state it fully.

(Objected to for form and substance.)

Ans. I do not know of any such.

Int. 104. Did you, during the time of your residence with Miss Howland, hear her say anything as to any fears she entertained, or had entertained, of any attempt of any person having the charge or care of her, as nurses, housekeeper, or otherwise, to shorten her life or release her from a state of suffering, or words of like or similar import, substance, or effect? State all you know on that subject.

(Objected to for form and substance.)

Ans. I never heard her express one such a thought or one fear of any one in the house doing her any injury, in any shape or
539 form. She always seemed to express a feeling of the greatest confidence in those who were around her, that they would do everything for her comfort by day or by night.

Int. 105. State how you regarded Miss Howland, whether with feelings of attachment or otherwise. State fully on that subject.

(Objected to for form and substance.)

Ans. I regarded her as my sincere friend, and felt to love her and respect her and do for her, and would do for her anything in my power to comfort her and relieve her sufferings and her long confinement.

Int. 106. State any facts within your knowledge tending to show whether or not the feelings of attachment you had to Miss Howland were reciprocated by her.

(Objected to for form and substance.)

Ans. Nine weeks before she died I wished to leave her for a week to have a little rest. She would say, "I know you ought to go away, but I can't bear to have you." She gave her consent for me to go for one week; I packed my trunk, and was going to leave the next day. At night she said to me, "I can't have you go to-morrow"—this was on Thursday night—"you shall go the first of the week." Sabbath eve I said to her, "You will let me go to-morrow; I do feel

that it will do me good." She said, "No, I can't let you go to-morrow; wait a few days." I said, "I cannot give it up, but I will wait a few days." Tuesday she had a very ill turn, and she said to me, "You will not leave me now; you will stay by me as long as I live. I won't ask you to do anything; I will have others to wait on me, but you stay by to see to these things. You shall go out every day, two or three times a day, and be gone a little while at a time, come in and see if I need anything, and go again."

Int. 107. If Miss Robinson ever said anything to you about coming on her side, state fully all she said to you and you to her, and state when it was.

(Objected to for form and substance.)

Ans. The next evening after her aunt's burial we were at Sylvia Ann's homestead, and Miss Robinson asked me into the parlor. She talked about the will—said her aunt had not given me as much as she ought to, and said if I would come on her side she would give me as much or more. I said to her, Miss Robinson, I won't do what I believe to be wrong for all of your money.

Int. 108. State whether Miss Robinson ever told you what she expected would be done with Miss Howland's house after her death. If so, what did she say?

(Objected to.)

Ans. She said she thought her aunt would have given to me and Mrs. Brownell, the housekeeper, the house.

The exhibits referred to are here formally put into the case by the respondents.

Cross-examination by David Thaxter, esq., of counsel for complainant:

Before I went nurse to Miss Howland I was nurse to Mrs. Elizabeth Rodman for about twenty months. She died while I was with her. Before that I had been in a family with a widow woman, Mrs. Nancy Rotch, a companion for her. She was about seventy-five years old. She had no other servant with her—occasionally some one to come in and do errands. I had regular wages. Before living with Mrs. Rotch I had never lived out with different families; I had only lived in my own families—brothers and sisters, I mean. While living with these I was not often in receipt of wages. While I was with Miss Howland I was paid four dollars a week—never more than that at any time. That was the price I had received before going there. I ought, perhaps, to have stated that after I had been a few weeks at Miss Howland's, I went to her sister's, Mrs. Robinson's, and stayed nearly two years, and then returned to Miss Howland's and stayed, as I have stated. The last year that I was with Mrs. Robinson I was paid only three dollars a week, having more privileges, and not working for her evenings.

(The following examination is stated by complainant's counsel to be made de bene esse, and not waiving any of the objections taken by them in the direct examination.

The counsel for respondents give notice they do not recognize any

right to take the examination other than as the rules prescribe, and do not consent to this course.)

541 I first knew that Miss Howland had made a will, making a provision for me—the will proved in court—when she added a codicil in November, 1864. She then first told me that she had made a will. That was the first time she told me she had made this will of 1863.

Cross-examination:

Cross-int. 1. When did Miss Howland first tell you at any time that she had made a will?

(Respondents object that this is a question for direct examination, and is not a cross-examination upon any matter introduced by them.)

Ans. I do not think she ever told me that she had made a will until this time in 1864.

Cross-int. 2. Was it at the time the codicil was being made or executed in 1864 that she told you that she had made a will?

Ans. At the time it was executed she first told me.

Cross-int. 3. Did she then tell you when she had made this will?

Ans. She did not. My testimony was taken in August, 1865, before Mr. Lemuel T. Wilcox, at my house, in the matter of the probate of this will.

Cross-int. 4. Did you not in fact know, and haven't you in substance so stated in that examination, that Miss Howland was making and executing this will at the time it was executed at Round Hill?

(Respondents object to question as not in cross-examination upon any subject examined in chief, and as leading.)

Ans. I knew she was having some writing done, but she never told me she was making a will, and I did not know it.

Cross-int. 5. What knowledge had you of this writing?

Ans. She told me she was going to have some gentlemen there to have some writing done, and wished me to prepare things for it. I got a board for her to write, as she was bolstered up in bed, and fitted it for her to write on, and got pen and ink. I fixed her in bed, bolstered her up, and then left the room. She might have wrote her name on another paper, to get ready to execute the will, before I went out of the room. That is all she did. It was about nine o'clock in the evening when I fixed her up in bed to sign this

542 paper. She first told me she expected the gentlemen to come there about the writing a little while after breakfast, perhaps about nine o'clock in the morning.

Cross-int. 6. Whether or not, during any part of that day, you saw Miss Howland doing any thing, and, if so, what, in reference to her writing her name, or to writing?

(Objected to by respondents as immaterial.)

Ans. She had pen, ink, and paper, and wrote her name. She said she was going to have gentlemen there, and wanted to write her name.

(Objection waived.)

Cross-int. 7. Was not that, and have you not so stated, for purpose of getting her hand in?

Ans. I think it was.

Cross-int. 8. How long did she thus practise at that time?

Ans. Five, or possibly ten, minutes.

Cross-int. 9. Did she write her name readily or slowly? how slowly? with ease or difficulty?

Ans. She wrote with a good deal of ease; not very slow. I was not present when this paper was signed.

Cross-int. 10. Have you not stated, and is it not the fact, that she did not want to have anybody know anything about this paper?

(Objected to by counsel for respondents as leading in form, immaterial in substance, and as cross-examination upon a subject not opened in chief, and as calling for opinion of witness and not for facts.)

Ans. She surely did not want that I should know, or she would have told me. [I think she wanted it a secret.]

(Respondents object to this clause in brackets as incompetent, because responsive to that part of the question which calls for opinion of witness.)

Cross-int. 11. Will you please look at the deposition given by you before Mr. Wilcox, before referred to, at the thirteenth interrogatory, and answer and say whether or not, in answer to the question as to what Miss Howland said about this paper, you did not say, "She didn't want I should know anything about it, as questions would be asked me." "She talked it over afterwards. She did not want anybody to know anything about it, till at last she was going to have a codicil written; then she did not hesitate to have it spoken of?"

(Objected to as above by respondents.)

Ans. I did.

543 Cross-int. 23. The next morning after this paper was signed, did you have any conversation, and, if so, what, with Miss Howland as to whether the folks on "the Neck" knew or would know about the signing of this paper?

(Objected to as above.)

Ans. I had a talk with her; she said that as a hack went down the people would notice about it. She said she hadn't done anything she was ashamed of. That was all I think of.

Cross-int. 13. Did she not say, and have you not so testified, that "I suppose the folks on the Neck will know all about it;" and did you not tell her that the folks on the Neck did not mistrust anything about it; and did she not then say, "How glad I am they don't know anything about it!" and did you not also testify, and is it not the fact, that "when she came to find out that the folks on the Neck did not know anything about it then she was pleased as could be?"

(Objected to as above by respondents.)

Ans. She did say so, and I have so testified; but this was some days after the next morning.

Cross-int. 14. Now look at the twenty-first interrogatory of the same deposition, and your answer, and see if you did not there say, "It

was the next morning when she said, (Miss Howland said,) 'I suppose the folks on the Neck will all know about it;'" and you told her "the folks on the Neck did not mistrust anything about it;" and she then said, "How glad I am they don't know anything about it;" and whether that is not the fact that this conversation did occur the next morning?

(Objected to for reasons above.)

Ans. I said it all, but of two different days. It was not until some days that I knew that the people on the Neck did not know of it.

Cross-int. 15. Did you not, in answer to the twenty-first interrogatory—which was as follows: "In the morning after the will did she say anything about the people of the Neck knowing it; if so, what?"—make the statement of conversation between you and Miss Howland recited in the last interrogatory?

(Objected to as above.)

Ans. There it is as it was, (pointing to the deposition,) only it was on two different days.

Cross-int. 16. Did you not testify in that deposition that
544 Miss Howland told you that she had left you a legacy, not a great while after she had made her will; and is it not a fact that she did so tell you, not a great while after she made her will?

(Objected to for substance and as above, and because the question refers to one part of the answer to the interrogatory and does not include the other, which is essential to the understanding of the whole.)

Ans. I testified that she had left me a legacy, and not a great while after the codicil was made—I might have said will, but I meant codicil—that she told me. It was after the codicil was made that she told me.

Cross-int. 17. Did you not testify before Mr. Wilcox, on the 24th of August, 1865, at your house, in substance or in the exact words as follows, in answer to a question as to when Miss Howland told you she had left you a legacy: "She told me not a great while after she made her will—it was some little time?"

(Objected to as above.)

Ans. She told me that she had left me a legacy—I feel that it was after this codicil was made. I presume that is what I testified. I meant codicil. I have no doubt those were my words.

Adjourned to Friday, Aug. 31, at 9 a. m.

FRIDAY, *Aug.* 31.

Cross-examination resumed:

Cross-int. 18. When the Round Hill will was signed, was there any person, other than the witness and yourself, in the house, who knew that Miss Howland signed any paper that night?

(Objected to as leading, and as opening new matter on cross-examination.)

Ans. Not that I know of.

Cross-int. 19. Was there any other nurse attending Miss Howland at that time but yourself?

Ans. Yes; Mrs. Eliza Brown.

Cross int. 20. When did you first see the will of 1862, executed in your presence and that of Mrs. Price and Mr. Peleg Howland—I mean the will of Miss Howland, of course?

545 (Objected to as assuming a fact not in evidence.)

Ans. The night of the execution.

Cross-int. 21. Where was it?

(Objected to as above.)

Ans. On the table; I cannot say who put it there; I first noticed it there when we were sitting at the table to have it signed. Miss Howland, Mr. Peleg Howland, Mrs. Price, Miss Hetty Robinson, and myself were in the room at that time.

Cross-int. 22. Did you first notice it yourself, or was your attention first called to the will?

Ans. I don't think any one called my attention to it. It is impossible for me to say in what part of the room I was when I first noticed the will; I did not see it before Mr. Howland came into the room; Mrs. Price came into the room before Mr. Howland; Mrs. Price was at tea, and went up into the room after tea; I always waited upon Miss Howland up.

Cross-int. 23. Did Mrs. Price go up with you at that time?

Ans. She was there immediately, but whether she went up that moment I do not know. I do not recollect what I had been doing before tea, except taking care of Miss Howland, my usual work.

Cross-int. 24. Did you change any of your wearing apparel or arrange your hair at all that day; and, if so, at what time or times?

Ans. I should not be able to tell the hour; it was my custom after dinner to change my clothes and arrange my hair.

Cross-int. 25. In what room in the house did you do this?

(Objected to as assuming a fact not proved.)

Ans. If I did it, and no doubt but what I did, I fixed my hair in Miss Howland's dressing-room; my dress was changed in the north chamber; that was not the room occupied by Miss Howland.

Cross-int. 26. Who went down stairs to attend to Miss Howland's wants, to get water, lights, &c., while you were in attendance on her?

(Objected to for form and substance.)

Ans. I would leave her long enough to go down and get such things, or go to the head of the stairs and call to Miss Brownell. Sometimes Miss Robinson did either or both.

(Answer objected to as incompetent; as stating only a custom or usage, and not what was done at a particular time, which should have been inquired of.)

546 Cross-int. 27. Have you any recollection that you did or did not attend to the wants of Miss Howland, by going up and down stairs, or to the head of the stairs, on this 11th day of January, 1862?

(Objected to for form and substance.)

Ans. I have no recollection of going up and down stairs in particular.

Cross-int. 28. Have you any recollection that you did not?

Ans. No; I have not.

Cross-int. 29. Can you now state what persons you saw during that day?

Ans. I cannot.

Cross-int. 30. What kind of a day was it?

Ans. It was not a stormy day. I cannot state more about the weather on that day.

Cross-int. 31. How do you know it was the 11th of January that you witnessed that paper?

Ans. I do not know; my name is there, and I know it was cold weather.

Cross-int. 32. During the winter of '61–'62, did you not go sometimes out of the house to see your relatives and friends?

Ans. Occasionally I called out for a short time. I called at my brother, Daniel Montague's, and a few neighbors. It would be impossible for me to tell every place I went to that winter, for I went but very little.

Cross-int. 33. Can you state whether you did or not go out thus any day or days in the month of January, 1862?

Ans. I cannot; I think I must have gone out a trifle.

Cross-int. 34. Have you any recollection in regard to it?

Ans. At this time I have none at all.

Cross-int. 35. Can you now say, on your oath, that you recollect, of your present recollection, that you did or did not go out on the 11th of January, 1862—I mean the day when you witnessed the bill?

Ans. I cannot say that I did go out.

Cross-int. 36. Can you say, of your present recollections, that you did not?

Ans. I have not the slightest idea of thinking that I was out that day; but I may have gone.

547 Cross-int. 37. On your oath, can you say from your present recollection that you did not go out that day?

(Objected to by respondents for form and substance.)

Ans. I can.

Cross-int. 38. Can say what?

Ans. That I did not go out.

Cross-int. 39. State what you now recollect you did that day.

Ans. I have no recollection of anything, except attending to Miss Howland, my general duties with her.

Cross-int. 40. State one thing that you now recollect that you did during that day.

Ans. I helped Miss Howland up in the morning, washed her, and dressed her.

Cross-int. 41. At what hour was this on this day?

Ans. It would be impossible for me to state the hour.

Cross-int. 42. Why?

Ans. She had very sleepless nights, and if she had been awake three or four hours she would want me to get up and call up the family as early as five o'clock sometimes, so that she could have her breakfast. At other times she would lie till six or seven o'clock.

Cross-int. 43. How was it that morning? At what time did she get up?

Ans. I cannot tell.

Cross-int. 44. Have you any recollections how she passed the night preceding that day?

Ans. I have not.

Cross-int. 45. Did Miss Howland go out to ride at any time during that month of January?

Ans. She did.

Cross-int. 46. Can you state on what days?

Ans. No.

Cross-int. 47. Can you state what days that month she didn't go out to ride?

Ans. I cannot.

Cross-int. 48. Can you state whether she did or did not go out to ride the day you witnessed the will?

Ans. I cannot.

548 Cross-int. 49. Since the death of Miss Howland, have you not stated that you never witnessed a will of Miss Howland's?

(Objected to for form and substance. Respondents also claim that if that question refers to any deposition or paper of the witness, her attention should be called to it.

Complainants object to counsel dictating an objection that could have no effect except to dictate to the witness.)

Ans. If I have made that statement I thought they had reference to one that was made at the Round Hills. (Complainant's counsel requests magistrate to repeat the question and ask for a direct answer, which is done, and witness then answers as follows:) I do not recollect that I have; and if I have, it had reference to this will of 1863.

Cross-int. 50. In the deposition taken by Mr. Wilcox, before referred to in this cross-examination, was this question put to you, "Did you ever witness a will of Miss Sylvia Ann Howland's?"

(Counsel for complainant put the deposition into the hands of witness, and her attention is called to the thirty-fifth cross-interrogatory. This statement is inserted at request of the counsel for respondents, who also desire to note that they claim this course should have been taken when the forty-ninth cross-interrogatory was put.)

Ans. I have no recollection of their putting of it to me. [If they did, I thought they meant the other will.]

(Part of the answer in brackets is objected to by counsel for complainants as not responsive to the question, and as otherwise incompetent.)

Cross-int. 51. Was that deposition read to you at the time it was taken by the magistrate?

Ans. It was.

Cross-int. 52. Did you then state to him that it was true?

Ans. As I understood it.

Cross-int. 53. Did you state to the magistrate that it was true "as I understood it?"

Ans. I do not expect I did.

Cross-int. 54. In that deposition is there not a question in the following words: "Did you ever witness a will of Miss Sylvia Ann Howland's?" and is there not written, as your answer to that question, "No; I never did?"

(Objected to for form and substance, and as calling on the
549 witness to state orally the contents of an instrument in writing, the best evidence of which is to be found in the original instrument produced and made the subject of examination.)

Ans. There is this question here, and here is the answer: "I never did." The exact words are, "No; I never did." I was not at first aware that the writing in the deposition was meant for "No."

Cross-int. 55. In that deposition was not this question put to you, "Did you ever witness a will of Miss Hetty H. Robinson? When was it?"

(Objected to as last above.)

Ans. I recollect the question being put to me, but the answer—I have no recollection of saying that I did witness this will at this time—I have no such recollection; it may come to me, but I have now no recollection of it.

Cross-int. 56. Did you not, in answer to that question, say, "I should think I had, I shouldn't dare to tell you—I should think it was in the winter of 1863, but shouldn't dare to say?"

(The attention of witness is here called, at request of counsel for complainant, to the answer to the thirty-sixth cross-interrogatory in the aforesaid deposition.

Respondents object as last above, and also as cross-examination upon points not opened in chief.)

Ans. I cannot recollect of my saying these things. I have no recollection of it.

Cross-int. 57. Have you now any recollection of ever witnessing a will of Miss Hetty H. Robinson?

Ans. No.

Cross-int. 58. Independent of the deposition which you now have in your hand, can you now recollect of your own memory that you were asked in the examination before Mr. Wilcox, at the time that deposition was taken, whether you ever witnessed a will of Miss Sylvia Ann Howland's?

(Objected to as last above.)

Ans. At this time I could not say. I know the question has been put to me several times, but I have no recollection about this time.

Cross-int. 59. Do you remember of your own recollection,
550 and independent of that deposition, that during that examination you said your never did witness a will of Miss Sylvia Ann Howland's?

(Objected to as last above.)

Ans. I do not recollect of making it.

Cross-int. 60. How long was it after you noticed Miss Howland's will of January, 1862, on the table, before you put your name to it as a witness?

(Objected to as assuming a fact not proved. The question is then withdrawn.)

Cross-int. 61. Did you notice the paper called Miss Howland's will, of January, 1862, on the table, for any and how long a time, before you put your name to it?

(Objected to as assuming a fact not proved.)

Ans. I did not notice it till Mr. Peleg Howland came to have it signed.

Cross-int. 62. How long after Mr. Howland came into the room was it before the paper was signed by Miss Howland?

(Objected to as last above.)

Ans. I could not say how long. It was very soon done; after the common salutations, as I should think.

Cross-int. 63. Why do you say "as I should think?" Do you recollect distinctly about it?

Ans. Mr. Howland was not there but a little while. I cannot tell exactly the time. How can a person, who never expected to be called up, remember distinctly whether it was ten or fifteen minutes or half an hour?

Cross-int. 64. Can you remember what was said by Mr. Howland to Miss Howland, and by her to him, when he went into her room and while he was there?

(Objected to as last above.)

Ans. I recollect he said to her after she had written her name, You can write as well as any of us. I think these were the words. That is all I recollect.

Cross-int. 65. Do you remember whether anything, and, if so, what was said on that occasion by Mr. Howland to the other parties in that room?

551 Ans. I do not recollect now of anything.

Cross-int. 66. Had you ever to your knowledge seen that paper which Miss Howland then signed, before you noticed it on the table at that time?

Ans. I had not.

Cross-int. 67. On the 3d day of January last, or on any day of that month, at an interview between you and John H. Clifford and William W. Crapo, at some house on Summer street, in this city, did Mr. Clifford ask you, in substance, if you remembered witnessing, with Peleg Howland and Keziah Price, a paper signed by Sylvia Ann Howland, and that you answered, "Yes; I remember it," or words to that effect? And did he not then ask you what that paper was, or words to that effect? And didn't you answer, "A will of Mrs. Howland's," or words to that effect? And did he not then ask you how you knew it was a will, or words to that effect? And did you not, in reply, say, in substance, "Because she said so at the time she wanted us to witness it. She did the talking with Mr. Howland," or words to that effect? State whether such an interview and such a conversation did not take place.

(Objected to for form and substance and as cross-examination upon new matter introduced by complainants themselves.)

Ans. I had an interview on some day in December or January last, I couldn't say, it might have been in December, with Mr. Clifford—I

do not remember about Mr. Crapo—at my brother's house in the afternoon. I think I remember Mr. Clifford's asking me whether I witnessed with Mrs. Price and Mr. Howland a paper signed by Miss Howland. Since my severe sickness of last fall I cannot recollect things as I used to, and I have got tired now and cannot get things together as I wish to.

(The examination of this witness was here suspended by the consent of parties, and in accordance with the judgment of the examiner, on account of the exhaustion of the witness, and the incipient indications of severe sickness in the witness, if the examination were continued without rest. The witness and all the parties were carefully cautioned by the examiner not to hold conversation during the recess upon the case or the testimony in progress.)

552 SATURDAY, *Sept.* 1.

Cross-examination resumed:

(Last question re-read to witness.) In reply to Mr. Clifford's question as to witnessing the paper with Mrs. Price and Mr. Howland, I think I did say, "Yes; I remember it." I think he then asked me what that paper was, and I think I answered, "A will of Miss Sylvia Ann Howland's." I think I did. I shouldn't dare to say certain. I cannot recollect whether Mr. Clifford then asked me how I knew it was a will, or words to that effect. I can't say that I do. I can't think I said she did the talking with Mr. Howland. I do not recollect saying the other thing, that she said so at the time she wanted us to witness it. I don't think of anything else to state about the interview.

Cross-int. 68. At that interview did you, in any form of words, say, in substance, that Peleg Howland or Mr. Howland did the talking with Sylvia Ann Howland or Miss Howland?

Ans. I cannot recollect that I did.

Cross-int. 69. Did you, at that interview, in any form of words, in substance say that Miss Howland said to the witnesses to that paper at the time of its execution, that it was her will she wanted them to witness?

Ans. I cannot remember that Miss Howland spoke at that time, and I don't remember that I told them so, neither.

(Objected to by complainant's counsel as not responsive, and otherwise incompetent.

The question being repeated, at request of complainant's counsel, witness says:)

Ans. I can't recollect that I did say so.

Cross-int. 70. Did any person come with Mr. Clifford at that interview?

Ans. There did. I do not know who it was I couldn't say whether it was or was not the gentleman now here, called as Mr. Crapo.

Cross-int. 71. Have you not, within the last few years of Miss Howland's life, seen Mr. Crapo at her room frequently?

Ans. I have.

553 Cross-int. 72. And yet yesterday you stated, did you not, that you did not know Mr. Crapo by sight?

(Objected to as assuming a fact not in evidence.)

Ans. I did; and I will give my reasons. Many persons that I can't call by name, I have seen their countenance. My sight is poor, and I do not know people as I used to.

Cross-int. 73. For how many years has your sight been thus poor?

Ans. For two years.

Cross-int. 74. How many years have you used glasses?

Ans. A good many years—say twenty years.

Cross-int. 75. Have you not for the last five or six years been troubled more or less with pain in the nerve of your eye?

Ans. I have. I have changed glasses during that time. I cannot say whether more than once.

Cross-int. 76. When that paper signed by Miss Howland, and witnessed by you and others, was signed, what light was there in the room—the paper of January 11, 1862, I mean.

Ans. I presume a sperm oil lamp, for that was what we used. I do not recollect, as a matter of memory, what the light was that night. The lamp I presume was there was one of the lights usually used to sit and work by—a tin lamp, or rather a glass lamp to set into a tin socket, with a tin shade to it.

Cross-int. 77. Was there a chimney to it?

Ans. Those oil lamps have no chimney, or nothing that I ever called a chimney.

Cross-int. 78. Will you state whether this lamp, as it stood on the table with this shade on it, would stand as high or higher than the book you now see standing upon the table?

(The book used is the 1st. vol. Black's U. S. Sup. Ct. Reports.)

Ans. The top of the shade I should think might be a very little higher, but I could not say.

Cross-int. 79. How many tubes were there to this lamp?

Ans. Miss Howland had two lamps; as to this lamp that was on the table, I can't say whether there was one or two tubes.

Cross-int. 80. Of the two lamps of Miss Howland, you have described one; describe the other.

(Objected to by respondents' counsel as assuming a fact not proved.)

554 Ans. They both had tin shades to them. One had a wide wick and the other had two tubes. They were both tin bottoms and a glass lamp. On reflection I think one of them might have been all tin, lamp and all. In height, with the shades on, I cannot say that there was much, if any, difference in that respect.

Cross-int. 81. Can you state, from your recollection, who first witnessed this paper—of January 11, 1862, I mean?

(Objected to by counsel for respondents as examination of a written document without its production.)

Ans. As to saying who put their names first, I cannot at this moment recollect; I remember perfectly that I was last.

Cross-int. 82. Do you remember whether you were all seated at the table together during the whole signing?

Ans. I do not.

Cross-int. 83. Do you remember whether the paper was spread open, like an open sheet of paper, with both leaves spread open, or the two leaves folded together as they lie in a quire of paper ?

Ans. I think it was doubled together.

Cross-int. 84. After that night, when do you now remember was the first time when any one asked you if you had witnessed that paper or when you first told any one that you had witnessed it ?

(Objection made to this examination as cross-examination upon matters not introduced by respondent, and as re-examination of a witness heretofore called by the plaintiff and examined upon this subject-matter.)

Ans. I cannot now tell anything as to the time.

Cross-int. 85. Do you remember to have mentioned it, or of any one's asking you during the lifetime of Miss Howland ?

(Objected to as last above)

Ans. I was asked by Mrs. Brownell, the housekeeper, many months after. I can't fix the time.

(Respondents object to the answer as immaterial.)

Cross-int. 86. Did you then tell Mrs. Brownell that Miss Howland had made a will ?

(Objected to as above and also for form.)

Ans. She said to me that one of the signers had told her that she had, and said, "Why didn't you tell me ?" I told her that I was sworn to secrecy. I don't recollect of anything else then.

555 Cross-int. 87. To whom besides Mrs. Brownell did you, in the lifetime of Miss Howland, mention the fact that you had witnessed this paper, or say anything about the paper, and when ?

(Objected to as last above, and as assuming a fact the contrary of which is proved.)

Ans. I cannot tell to whom I ever mentioned it, nor when.

Cross-int. 88. Do you recollect that you ever did so mention it ?

(Objected to as above as to the last four interrogatories.)

Ans. I recollect once speaking to Mr. Howland, who witnessed the will, and his wife was present; and also on another occasion, the other witness—Mrs. Price—and her daughter were present when I spoke of it. I cannot recollect any other person present. I recollect now speaking of it, having some conversation with Dr. Gordon, in which it was mentioned, during the lifetime of Miss Howland. I cannot recollect who was present then ; I do not recollect that any one was present ; I cannot tell when it was ; I think it was before the Round Hill will was executed. The talk was in Miss Howland's house, either in New Bedford or at Round Hills, I can't say which. When I spoke of it to Mr. Howland, and his wife was present, it was at his house. I do not know but he commenced the conversation. I could not give any idea of the time, not even whether it was before or after the making of the Round Hill will.

Cross-int. 89. Was it before or after the making of the codicil to that will?

(Objected to as last above.)

Ans. Before, I think.

Cross-int. 90. Were you present with Miss Howland when Dr. Gordon was with her—always present?

Ans. Not always.

Cross-int. 91. Were you present at any time when Miss Howland gave Dr. Gordon any instructions about how to make this Round Hill will?

Ans. I was not.

Cross-int. 92. How was it in regard to the codicil?

(Objected to.)

Ans. I was not present when any instructions were given.

Cross-int. 93. Were you present at any time when Miss Howland gave any instructions to any one about that will or codicil?

556 (Objected to.)

Ans. I was not. After the interview with Mr. Clifford, to which my attention has been called, I saw Mr. Stetson some time before the 17th day of January last. I do not remember of seeing Mr. Thomas. I fix the date because I left the city for Vermont that day, I think; it may have been a day or two different. I think I then stated to Mr. Stetson the fact that Mr. Clifford had been to see me. I do not remember when I first spoke to the counsel for respondents or to Mr. Mandell or to Dr. Gordon, after the death of Miss Howland, about this will of January, 1862. I had spoken to them before Mr. Clifford came to see me; I cannot say to which of them. If I ever spoke to Mr. Mandell about it, it was in Miss Howland's house. I think there was some conversation with him about it; I do not know whether he spoke to me or I to him about it.

Cross-int. 94. I ask you again, can you state upon your personal recollection that you spoke to Mr. Mandell or he to you of this will of January 11, 1862, before Mr. Clifford came to see you as you have stated?

Ans. Mr. Mandell was present the day my testimony was taken at Miss Howland's house, and I think it was talked of there. I may be mistaken, but I think it was talked of there. Mr. Mandell, Mr. Stetson, and, part of the time, Mrs. Brownell was present when my testimony were taken. Mr. Stetson wrote what was written. This was in July or August of last year. Dr. Gordon was not present. It was before my deposition of August 24, 1865, to which my attention has been called, was taken.

(At this point the examination of the witness was suspended, and the whole preceding examination was carefully read over to the witness by the examiner in the presence of the counsel on both sides and the parties, when the witness desired to modify the answer to the seventy-ninth direct interrogatory so far as to add the following:) "Mrs. Price, as well as myself, watched with Miss Howland that night; were up with her most of the night."

(The witness then delared the foregoing to be a correct statement of her testimony thus far, and in attestation of the same, signed her name hereto.)

(Signed) ELECTA MONTAGUE.

557 The examination was then adjourned as unfinished to Tuesday, September 4, at ten and a half o'clock a. m., by consent of parties and the appointment of the examiner.

TUESDAY, *Sept.* 4.

Cross-examination resumed:

Cross-int. 95. Before the interview with Mr. Clifford at your brother's house, have you any recollection of speaking of the paper witnessed by you in January, 1862, in any other place or at any other time than where you have stated you gave your testimony to Mr. Stetson in Miss Howland's house?

(Objected to as cross-examination upon new matter introduced by complainant, and as incompetent.)

Ans. I have spoken of it at other times. I think before the interview with Mr. Clifford. I do not at this time recall any particular occasion.

Cross-int. 96. What became of that paper of January 11, 1862, after you witnessed it, so far as you know?

Ans. I do not know. I have no recollection of seeing it after it lay on the table.

Cross-int. 97. You have stated that you had not seen that paper before you saw it on the table that night. Had you heard Miss Howland before that give any instructions for making a will?

(Objected to.)

Ans. I had not.

Cross-int. 98. And knew nothing of a will having been drawn up for her?

(Objected to.)

Ans. I knew there was talk about this will, but not of anything there was going to be in it.

Cross-int. 99. Did you, at any time before the witnessing of that paper, hear Miss Howland give any directions to any one about drawing that will?

(Objected to.)

Ans. I did not hear her give any directions.

558 Cross-int. 100. At the time when you say Miss Robinson cried about the proposed new addition to the house by Miss Howland, did Miss Howland remain at her house on that day or go to Round Hills?

Ans. She went to the Round Hills. Mrs. Price and myself went with her. Mr. Gray drove us.

Cross-int. 101. How long did you remain there?

Ans. At that time we staid there twelve weeks, I think.

Cross-int. 102. From the time you left town for Round Hills that afternoon, when did you next go into her house in town?

Ans. I came back one day, did not stay all night. We went, I think, the last days of June; and I spent this day in town, some time in August. I can't tell more particularly.

Cross-int. 103. When was the new part built?

Ans. Commenced about the 8th of July, 1863, and it was not finished till December.

Cross-int. 104. Did Miss Howland personally occupy any portion of it?

(Objected to as immaterial.)

Ans. She did. She was drawn into the rooms, being unable to walk, and sat about in them a great deal.

Cross-int. 105. Did you advise this addition.

(Objected to as immaterial.)

Ans. I told her she had not room to make her family comfortable, when she first talked of it.

Cross-int. 106. After the will which has been proved was read after the funeral, have you not at any time said that you thought you were to have had that house, or that you ought to have had it, or that people said that you and Mrs. Brownell ought to have had it?

(Objected to as above.)

Ans. I never said I thought I ought to have had it. Miss Robinson said she thought her aunt would have given it to us; some people have said so to me, but I don't think I ever said so; I don't remember it.

Cross-int. 107. Did not you say to Miss Robinson that people said you and Mrs. Brownell ought to have had that house?

Ans. I don't think I ever did; don't remember it.

Cross-int. 108. Didn't you say to Miss Robinson that some people thought you would have it?

559 Ans. I may have said so, but I don't remember that I did. Some people have said so to me.

Cross-int. 109. Who were present when you say Miss Robinson said something to you about Mr. C. R. Tucker advising her about making a will, if anybody was present?

Ans. I think Miss Howland. I think no one else.

Cross-int. 110. To whom did you first tell this?

Ans. I cannot tell.

Cross-int. 111. When was your attention first called to it, and by whom?

Ans. I don't remember. I have no recollection of talking with any one about the matter until after the death of Miss Howland. I cannot tell when I first told it to the counsel for respondents. I told it some time ago, not lately. I should think I might have told it to Mr. Mandell and Dr. Gordon before I told it to counsel, but I wouldn't say for certainty. I think I told it first in Miss Howland's house, I couldn't tell when. Mrs. Ruth Howland is dead. It was in November or December, 1865. I was in Vermont myself when she died.

Cross-int. 111½. Did Mrs. Ruth Howland visit Miss Howland at any particular seasons of the year?

(Objected to as immaterial.)

Ans. She didn't come in the winter months when the weather was very cold. She came in the spring, fall, and summer. She was there in the [the] spring of 1860. She came in February, at the death of Mrs.

Abby Robinson, which was the only time she ever came in the winter while I was there. She staid twelve weeks at that time. I do not remember whether she was there any that summer.

Cross-int. 112. While she was there in the spring of 1860, was anything said to her about Miss Howland's will by any one?

(Objected to as immaterial.)

Ans. I do not remember that there was.

Cross-int. 113. Have you any recollection that, during those twelve weeks, anything was said by Miss Hetty H. Robinson to Mrs. Ruth Howland about the subject of her aunt, Miss Sylvia Howland, making a will?

(Objected to for form and substance.)

Ans. I cannot say that I have. I do not remember that
560 spring that anything was said by anybody about that in Mrs. Ruth Howland's presence.

Cross-int. 114. While Mrs. Ruth Howland was visiting Miss Howland, as you have stated, did she generally remain with Miss Howland in her room during the day, and was this so in the spring of 1860?

(Objected to as immaterial.)

Ans. I should think she would be in her room about half of the time. This was so then.

Cross-int. 115. You have said in substance that Miss Robinson repeatedly urged her aunt to make a will, and that sometimes she would seem very commanding. State what she said at these times. Give her words, or the substance of them.

Ans. At one time she said, You ought to do it; you ought to make a will; it is too bad that you don't do it. She said it was not using her well for her not to do it. She had had the promise of this money, and she felt that her aunt ought to do it; that her grandfather had promised it, and her mother had promised it. I do not think of anything more that I could give her words for.

Cross-int. 116. Was this all said at one time?

Ans. No.

Cross-int. 117. Then you have put together what was said at several different interviews?

Ans. I have.

Cross-int. 118. Can you now give any time when any part of this was said, and who were present?

Ans. I cannot give any dates. No one was present at any of these interviews but Miss Robinson, Miss Howland, and myself.

Cross-int. 119. How do you know when the will of Jan. 11, 1862, was made, if you knew it at all?

Ans. I had heard Miss Robinson ask Miss Howland to sign it.

Cross-int. 120. And that is the only knowledge you had, was it?

Ans. It was.

Cross-int. 121. How did you know at any time that Miss Robinson had made a will?

(Objected to as assuming two facts not proved.)

Ans. She talked about it; said that she had, and talked about the signers to it.

561 Cross-int. 122. The question is not as to making a will, but the question is how you know she had made a will.

(Objected to as assuming a fact not proved.)

Ans. I can't say whether she told me when it was done. I think she told me she was going to have it done.

Cross-int. 123. Can you say that she told you at any time that it was done?

Ans. I don't know as I can,

Cross-int. 124. When was it that she asked you as to shortening a person's life by making a will?

Ans. It was March or April of 1860. No one but myself was present. It was in the west chamber of Miss Howland's house.

Cross-int. 125. What did Miss Robinson say to you about the signers to her will, and when, and who were present?

(Objected to.)

Ans. She spoke about having my brother; I think also of Mr. Edward Taber and Mr. Peleg Howland. No one but myself was present, and I cannot tell the date.

Cross-int. 126. What reason, if any, did she give you for speaking to you about it?

(Objected to for form and substance.)

Ans. I do not remember now of any that she gave. She spoke to me more than once about it; I can't tell how many times. I don't recollect her ever talking of any other persons for signers. I do not now recollect anything else that she said on the subject.

Cross-int. 127. In answer to the question whether you got the ink for Miss Howland to sign the will of January 11, 1862, you said that you got it from a table drawer in her room—pen, ink, and paper. When did you get these; how long before the will was signed?

Ans. I think not till Mr. Peleg Howland came; could not say for certain. I have said I could not tell how long after he came in before the will was signed.

Cross-int. 128. What was done with the paper you took from the drawer?

(Objected to as assuming a fact not proved.)

Ans. I have no doubt but what I laid it back again. I can't say, but I always took care of her things. The paper was used for
562 whatever she wanted; a part of a quire was brought in for her to try her pen on. When she had done with it, it was laid back.

Cross-int. 129. What, if any, use was made of the paper at this time that you took from the drawer?

Ans. I do not remember of any.

Cross-int. 130. Have you any recollection now whether any use was or was not made of this paper at that time?

Ans. I have not.

Cross-int. 131. When you say this part of a quire was brought in for her to try her pen on, what do you mean by her trying her pen—writing her name, or trying her pen to see if it would mark?

Ans. She always wrote her name—that would show that the pen would mark. She always did this before signing any instrument.

Cross-int. 132. When were you first called upon or asked to state what occurred, if at all, at the time when this paper dated January 11, 1862, was executed?

(Objected to as re-examination upon a subject upon which witness has already been fully cross-examined.)

Ans. I think first in Boston. I never had any close questions put to me about it before then, and I don't know that I ever tried to explain it before. If I ever did I do not now recall it.

Cross-int. 133. When were you first inquired of as to whether there were any papers attached to that will of January, 1862, when you witnessed it?

Ans. I cannot give the date—within the last two or three weeks.

Cross-int. 134. When first asked when you saw any stitches or any thread on it?

Ans. Within two or three weeks of this time.

Cross-int. 135. Did you ever see Miss Robinson after that paper was witnessed by you, on any return of hers from New York, prior to Miss Howland's death, without her asking you if her aunt had made a will in her absence?

Ans. She asked me a number of times. I think the two or three last times before her aunt's death she didn't ask me, but before that she always asked me. I am not sure she did not ask me once during the last two or three times that I saw her. I cannot remember exactly about it.

563 Cross-int. 136. What reply did you make?

Ans. I always told her, not to my knowledge.

Cross-int. 137. Did she ask you to inform her if you ever knew of her making another will?

Ans. No; I do not remember that she ever did.

Cross-int. 138. Never in any form expressed any desire that you should inform her in any way if her aunt made another will, did she?

Ans. I think not.

Cross-int. 139. When did you last see Miss Robinson, to speak with her, prior to her aunt's death?

Ans. I think in May 1865. The fore part of the month.

Cross-int. 140. When prior to that? Give the times in 1864 and 1865.

Ans. I meant in my last answer to have said May, 1864. I saw her before that in January of that year.

Cross-int. 141. During the whole time that you were with Miss Howland, was there not a set of furniture in the house, known as Miss Robinson's, and was it not there at the time of her death?

(Objected to as immaterial.)

Ans. I do not remember that I ever heard Miss Howland say that there was furniture there that belonged to Miss Robinson. It never was called hers. There was a carpet on the north chamber floor that I have heard Miss Howland say was Miss Robinson's mother's. She did not say whether she had bought it or how she came by it.

Cross-int. 142. When were you first asked about the brown envelope, which you say Miss Howland directed Mrs. Brownell to put in for Miss Hetty after that occurrence?

(Objected to as assuming a fact not proved.)

Ans. I have said I thought it was a yellow one. Considering the question as relating to that, I must answer that I cannot recollect when I was first asked about it. I do not think it was until after Miss Howland's death. I do not recollect of speaking of it until afterwards, but I may.

Cross-int. 143. To whom, as you recollect, did you first speak of it, or by whom were you first asked about it after her death?

Ans. I cannot tell either.

Cross-int. 144. Can you tell about the time?

564 Ans. I have no present recollection, but it was not a great while afterwards.

Cross-int. 145. Can't you say whether to Dr. Gordon, Mr. Mandell, or their counsel?

Ans. No; I cannot.

Cross-int. 146. Can you recollect in what connection you first spoke of it?

Ans. I cannot.

Cross-int. 147. Can you recollect that you ever stated all that you say occurred at the time this yellow envelope was put into the trunk before this present examination?

Ans. I think I have; I think to Mr. Stetson; I won't be certain; I think I did in the year 1865.

Cross-int. 148. You spoke of Mrs. Brownell and Miss Robinson going with the keys of the trunk to the closet. State what, if anything, you did then.

Ans. I walked to the closet door when they went in, and I looked in. I did not do anything.

Cross-int. 149. Why did you go there?

Ans. Curiosity led me to see the door opened, I suppose.

Cross-int. 150. Were you in the habit, when Mrs. Brownell opened the trunk, to go to the door for the purpose of seeing her or for any other purpose?

(Objected to as incompetent and immaterial.)

Ans. No.

Cross-int. 151. When you went to the closet door at this time, where did you go from?

Ans. I came up stairs about the same time that Mrs. Brownell did, and was in the room that the closet was in.

Cross-int. 152. Did you go up stairs for any other purpose than to go to the closet door?

Ans. I was up in that room when Miss Robinson asked me to go down and tell Brownell to come up and bring the keys.

Cross-int. 153. How long did you stay there?

Ans. I do not know. My bed was there and I slept there that night. Whether I went out in the evening to another room, I cannot remember.

565 Cross-int. 154. You have said Miss Robinson came to you immediately after the reading of the will. Where were you then?

Ans. In the kitchen or in the dining-room down stairs.

Cross-int. 155. How do you know it was immediately after the reading of the will that she came where you were?

Ans. She came first, then Mrs. Congdon, and then Mrs. Gerrish; they came to tell us the news, and I think they said the will had just been read. I suppose they came from the parlor, but I did not see them. They did not all come at once. I couldn't say whether they all were there together. I think neither Mrs. Congdon nor Mrs. Gerrish were there when Miss Robinson was there. (The witness says the Mrs. Congdon was Mrs. Lydia Congdon.)

Cross-int. 156. Which said, or did all say, that the will had just been read?

Ans. Miss Robinson said so. They told what was in it.

Cross-int. 157. How long did each stay where you were?

Ans. I could not tell how long they stayed. I should think Miss Robinson did not stay a great while.

Cross-int. 158. You have stated that when Miss Robinson disobeyed Miss Howland's orders it affected her. What orders of hers did you know of her disobeying, to which you alluded then?

Ans. At times she would interfere with the household affairs, and Miss Howland would tell her she must not. Miss Howland would say she could manage her own affairs, and did not wish her to interfere. Miss Robinson would come to Miss Howland with complaints against the servants. She would advise her about her dress, that is Miss Howland would advise Miss Robinson about her dress, and she would promise she would dress differently, and then she wouldn't. There were a great many orders, but I cannot recall them now.

(Answer objected to by complainant as not responsive.)

Cross-int. 159. Is the last the only answer you can make to the question put you?

Ans. At this time, I do not think of any one thing to bring up.

Cross-int. 160. You also speak of Miss Robinson's unkind treatment of her aunt. State to what unkind treatment you refer.

Ans. Putting on the addition of the house, the time she was going to Taunton to stay—Miss Robinson talked very unhandsome to
566 her, because she would ride up instead of going up in the cars. (Objected to as describing instead of stating what was said.) She seemed offended, and talked unpleasantly. (Objected to by complainant as last above.) She thought it was so foolish in her aunt to go in the carriage; she thought she ought to go in the cars like other people; and to think she must always be riding round in a hack, instead of going in the cars. One time Miss Robinson went to her cousin, James Robinson's; it commenced snowing, and Miss Howland sent her man, Mr. Brownell, to get a hack to bring her home. Miss Robinson wouldn't ride in the hack. Mr. Brownell went there to tell Miss Robinson of her aunt's orders about the hack and to see what hour she wanted it, and she said she would not ride; told

him not to get it; she should come home afoot when she got ready. When Miss Howland found that Mr. Brownell had come back, she sent for him to come up into her chamber. He told her what Miss Robinson had said, and that he had said to her, Miss Robinson, that her aunt would be very much dissatisfied if she did not ride. It caused Miss Howland to feel very sad that Miss Robinson would come home in the wet. She said it did seem as if it would kill her (Miss Howland) to have Miss Robinson disobey her so, or words to that effect. How could she be so cruel as to come home in the wet so. If it was for nothing else only to please her she ought to have done it. One time Miss Robinson wished to have a party. Miss Howland thought she herself was not able to bear the care of it; but she finally consented, if Miss Robinson would say what she wanted, and let her, Miss Howland, do as she pleased about getting the things. Soon as Miss Howland commenced giving her orders through Mrs. Brownell to Mr. Brownell, the servant man, as, for instance, for so many chickens, Miss Robinson thought that was too many. When she told how much ice-cream was wanted, Miss Robinson said that was too much. She had promised her aunt she would have a waiter come to wait upon the company—a man waiter—and then she wouldn't have him. She broke her engagement in all these things. Then she wanted to have a girl working in a family to come in and wait. Miss Howland was very unwilling to send into families to get their help away. Miss Robinson went and engaged her, and then the family where she lived had company and she sent word she couldn't come. Miss Howland tried to persuade her to have the man she expected she
567 would have had, but as she could do nothing with her, she sent for Mrs. Gerrish; she thought she might prevail upon her. Mrs. Gerrish came, and said she could do nothing with her. She could not prevail upon her to have the man. Then Miss Robinson wanted to send and get her cousin's cook to come and be waiter. That Miss Howland was very unwilling to have done, but Miss Robinson would do it. All these things were very trying to Miss Howland, after Miss Robinson's fair promises that she would let her aunt do as she pleased. At this time she disobeyed her aunt's orders about setting the table. Miss Howland told Mrs. Brownell to get her best table-cloths and napkins to put on the table. She got them; but Miss Robinson said no; the every-day ones were good enough. Miss Robinson put on some of the meanest little "dowlies" that I ever saw anybody put on a table; they were, some of them, of cotton. Mr. Eben Perry got one and carried it home, and afterwards sent it back; said there was a mistake. That troubled Miss Howland, to think she should set her table with such things, and the neighbors should carry them away. Miss Howland said that was the last party she should let Miss Robinson have in her house after being treated so. I have nothing more to add upon the point of the party. At one time Miss Howland and myself were invited out to spend the afternoon; Miss Robinson was also invited, but didn't go. Before going away Miss Robinson told me to walk home, and said she would be out at the gate to assist her aunt in getting

from the carriage into the house. Before we were coming away from the place where we were spending the afternoon, Miss Howland looked very tired and trembled a good deal. When I got her in the carriage to come home she said to me, "Get in here with me." When we got home, Miss Robinson was out at the gate to help Miss Howland in. Miss Robinson says to me, Why didn't you come home afoot, as I told you to? I told her her aunt wished me to ride. She said there was no need of my riding, making the expense. That troubled Miss Howland to think that she should do so. She said she had no right to tell me not to ride, or something like that; they may not be the exact words. I do not think of anything else just now.

Cross-int. 161. You have produced three letters of Miss Robinson to you; have you other letters of Miss Robinson to you, which the counsel for respondents have or have had?

568 Ans. I cannot say whether they have had them or not. I gave them up to a friend, and I do not know what was done with them.

Cross-int. 162. Have you received other letters from Miss Robinson than those produced, and, if so, how many?

Ans. I have; sometimes she used to write to me, sometimes to her aunt. I could not tell how many I have received.

Cross-int. 163. Can you say you have received as many as three or as many as a dozen others?

Ans. It is impossible for me to tell.

Cross-int. 164. You can't even say, from your present recollection, that you received as many as three more, can you?

Ans. I could not define the number at all. I should think I had received as many as three others. I cannot give you any idea of the number.

Cross-int. 165. When did you place these in the hands of your friend, as you have stated? And who was that friend?

Ans. The friend was Mrs. Sarah Howland; it was before Miss Sylvia Ann Howland's death.

Cross-int. 166. Is Mrs. Sarah Howland the wife of Mr. Peleg Howland; and did she ask you for these letters?

Ans. She is his wife. I don't remember whether she asked me for the letters, or whether I let her take them.

Cross-int. 167. How long was this before Miss Howland's death?

Ans. I do not recollect. I can't say whether one month, two, three, or four months. I do not recollect any of the circumstances. I cannot recollect now what season of the year it was. It was after the making of the codicil to the will which has been proved.

Cross-int. 168. Did Mrs. Sarah Howland give you any reason for taking them?

(Respondents object for form and substance.)

Ans. I recollect she said she thought they ought to be preserved.

Cross-int. 169. Where was this said, and who were present?

Ans. In the north chamber of Miss Howland's house. No one else was there.

Cross-int. 170. Did she take any other papers from you at that time?

Ans. I think nothing but letters. No other letters but those coming from Miss Robinson, as I think.

569 Cross-int. 171. What, if you know, became of the letters which you say Miss Robinson wrote to her aunt?

Ans. Some of them were in Miss Howland's bureau drawer in her room when she died. Miss Robinson took these.

Cross-int. 172. When did Miss Robinson take these, and who was present?

Ans. I cannot say when. I think, but I may be mistaken, that I saw Miss Robinson take them—take all the things out and clear the drawer.

Cross-int. 173. Did you see anybody else at that bureau besides Miss Robinson, if you saw her there?

Ans. I do not remember that I did. Her friend from New York, a lady whose name I can't now recollect, had some things in some of the drawers, and went to the bureau.

(The counsel for complainant here call upon the counsel for respondents to produce any other letters they may have of Miss Hetty H. Robinson, the complainant, to Miss Montague, the witness, stating that they now desire to use them for cross-examination of the witness.)

Cross-int. 174. How often, after Miss Robinson went to New York, did you or her aunt receive letters from Miss Robinson down to the time of her death—I mean when she went to New York in 1863?

Ans. I shouldn't think, in general, that we had a letter from her oftener than once in four or six weeks. They may have been oftener; I can't tell. I generally replied to these letters, both those written to me and to her aunt; I did so by direction of her aunt. Mrs. Sarah Howland wrote one or two; I can't tell how many; this she did by Miss Sylvia Howland's direction. I did not preserve all the letters written to me by Miss Robinson; I kept a very small proportion of them. The number I cannot now remember. When Mrs. Sarah Howland took them, they were in a package together.

Cross-int. 175. Did you at any time after Miss Robinson left for New York, in 1863, advise Miss Howland that, on account of her nervous state, she had better not have Miss Robinson come to see her?

(Objected to for form and substance, and as cross-examination on new matter.)

Ans. I do not think that I did; she was decided, and spoke of it herself; she was very decided about it.

570 Cross-int. 176. You concurred with her, did you not?

(Objected to as last above.)

Ans. I did not till after she spoke of it.

Cross-int. 177. When was this that she so spoke, before or after the making of the Round Hill will?

Ans. It was at the Round Hills. I should not dare to say which it was. She lay on her bed and said, "I cannot have Miss Robinson

come back and be in my family." It was not made in reply to anything said by anybody. No one was present but myself, and I was not speaking. Nothing had been said to her by any one, to my knowledge, before this, about Miss Robinson's coming back.

Cross-int. 180. (Error in number, but so continued on as in original.) Had there been any intimation given at that time that Miss Robinson thought of coming back?

(Objected to as above.)

Ans. Not by any person that I know of.

Cross-int. 181. Was it not then known to you and to Miss Howland that Miss Robinson's father was in ill health, and that she was then travelling with them?

(Objected to as above.)

Ans. We knew that she was going to the springs or to West Point with him. We knew her father was in ill health.

Cross-int. 182. Did you at any time hear Dr. Gordon advise Miss Howland that for any reason Miss Robinson had better not come there?

(Objected to as above.)

Ans. The first time Dr. Gordon came after Miss Howland's conversation with me, that she could not have Miss Robinson there, Miss Howland said to him, "I cannot have Miss Robinson come back to my house," and said there must be a letter written so that she wouldn't come back, and asked the doctor if he wouldn't write it. The doctor wrote and read it to Miss Howland, and, I think, took it over to town to put it in the post office. That is what she told him to do. The next day, when he came, she asked him if he got into the city in time for it to go out in the mail. I rather think he wrote two letters, but am not positive. He might have written three. I am not positive about the others. I cannot distinctly recollect. I cannot distinctly recollect that he wrote any letters other than the one I have just described.

571 Cross-int. 183. You have said that Miss Howland said that Miss Robinson told her a falsehood about a letter; what was the falsehood?

(Objected to as above, and as assuming a fact not proved.)

Ans. As near as I can recollect, Miss Robinson told Miss Howland that Mr. Grey had a letter, and carried it in his pocket two days before giving it to her, (Miss Robinson,) and Mr. Grey said, that he sat in the carriage, waiting for the gentleman to finish the letter, and brought it right over and gave it to her, and said he could prove it. Mr. Grey was Pardon Grey. I think this was in the summer of 1862. It may have been in 1860. It was in the summer.

Cross-int. 184. In the objection that her aunt made to her, Miss Robinson, riding the horse of which you have spoken, did she place it on the ground that it was not safe for her to ride?

Ans. Yes; she said so. It was hard on the bit; she thought she couldn't hold it.

Cross-int. 185. Did her aunt say anything about buying a horse, and giving it to her to ride?

Ans. There was talk of her having a horse of her own, but I do not now remember whether her aunt was to give it to her.

Cross-int. 186. After the death of Mrs. Abby Robinson, do you know whether Miss Howland spoke to or had any intercourse with Miss Robinson's father?

(Objected to for form and substance, and as cross-examination upon matter not examined upon in chief.)

Ans. I do not know as after her burial any words were exchanged between them. I never saw any.

Cross-int. 187. Is that one of the letters you wrote to Miss Robinson at the request of her aunt—letter marked D. R. C. P.?

Ans. It is.

(The letter is put in the case, and annexed as an exhibit. The counsel for respondents object to the competency of the letter.)

Cross-int. 188. Is this another?

(Letter marked E. R. C. P.)

Ans. It is.

(The letter is put in the case and annexed as an exhibit.)

Cross-int. 189. After the death of Miss Robinson's mother,
572 was not Miss Robinson, while she was with Miss Howland, in the habit of writing to and receiving letters from her father?

(Objected to for form and substance, and as cross-examination upon new matter.)

Ans. She was.

Cross-int. 190. During the last two years, or three years, of Miss Howland's life, did she take more or less laudanum, in any form, by the directions of her physician?

(Objected to as last above.)

Ans. She did take some.

Cross-int. 191. What colored ink did she have to write with while you were with Miss Howland?

Ans. Black.

Cross-int. 192. Did you have a paralytic shock or a severe fit of sickness last winter?

Ans. Last summer, I mean in August, 1865, I had a paralytic stroke, I suppose. I never have recovered from it. It affected my right side. My right hand was helpless for three weeks. I was very sick at the time my deposition was taken in that August.

Cross-int. 193. You are one of the legatees under the Round Hill will are you not?

Ans. I am.

Adjourned to Wednesday, September 5, 9 a. m.

WEDNESDAY, *Sept.* 5.

Direct examination resumed:

Int. 109. You have spoken of your sickness and your memory. State whether you have any doubts as to your memory of the transactions and conversations of which you have testified.

(Objected to for form and substance.)

Ans. I have no doubt; where I have, I have spoken of the doubt in this deposition.

Int. 110. If you have observed any change in your memory, state in what that change consists; whether in your memory of names, dates, etc., or how otherwise?

(Objected to as last above.)

573 Ans. If any change, it is in names.

Int. 111. You were inquired of as to acts of unkind treatment, and otherwise, of Miss Robinson which distressed her aunt. State what you recollect about the occurrence with Mrs. Brownell.

(Objected to as incompetent.)

Ans. In the winter or spring of 1862, I think in February or March, we were eating breakfast, Miss Robinson got through before Miss Howland and myself, and went up stairs. We soon heard a very strange noise. Miss Howland says, "What's that?" I said, It is Miss Robinson, she makes all sorts of noises. (Complainant objects to all statements of conversation when Miss Robinson was not present.) She says, "Go and see." I went into the entry and there met Mrs. Fally Brownell, and she said that Miss Robinson had pushed her so that she had fallen down stairs, and that she was hurt. Miss Robinson was then up stairs, but she immediately came down. Mrs. Brownell said Miss Robinson had taken hold of her clothes and torn them from the binding, her dress from the waist and her skirts from the binding. I could not state whether Miss Robinson was present during this talk. Miss Howland told Mrs. Brownell to come into the dining-room where she was, and ordered her to have something to take; she was faint. Miss Howland said she could not have such work in her house, and said she would have Mr. Mandell sent for and have a talk with him what she should do. She gave orders for the man to go and call Mr. Mandell, and he went. After he was gone Miss Robinson begged and entreated her aunt so much not to have her tell Mr. Mandell anything about it, saying that it would ruin her character to have it go out, that she finally prevailed on her aunt to send the man back to Mr. Mandell and tell him not to come. It was very trying to Miss Howland to think she should have her niece to abuse any one in her house so. She said she would not have such work in her house.

(And now, upon the testimony being read over to deponent, she desires to add, that she now recollects the name of the friend of Miss Robinson, referred to in the answer to the one hundred and seventy-third cross-interrogatory—that it was Mrs. Minell.

Previous to the closing of the deposition, and after the last interrogatory, the counsel for respondents state, in reply to the call of yesterday, made by complainant's counsel, for certain letters,

574 that they have no knowledge or possession of any other letters from Miss Robinson to Miss Montague than the letters put in by them as their exhibits; but they now produce and offer, for the use of complainant, two letters from Miss Robinson to Miss Sylvia Ann Howland, now in their possession, and the same being the only letters of Miss Robinson in their possession, except those annexed, before referred to.

Letters last referred to are not put in the case by either party.)

ELECTA MONTAGUE.

575 *Exhibits.*

(A—R. C. P.)

Dear Electa,

Please ask Aunt not to buy any carpets or furnitur until I come home in the Autom—please send me a diret answer because it seems a shame to have so much spoiling and because it not suit the taste of all the different neighbors have to buy new. I will let her have furnitur and carpets and get her what would be better than you can get in New Bedford. I will ask Anna and get it in N Y she can cut the furnitur to suit—

The Scotts notes have helped me to bear up under this trial. I can only look to my heavnly Father for assistance.

I am glad Aunt is better. With love to her—it is a great dissapointment to me because you both promised I could come over to the Round Hills, love to Mrs B—and yourself—

HETTY.

[On back] I am much obliged for goose berrys.

(B—R. C. P.)

Dear Monte,

Will you ask Aunt if I may come over there any time after Thursday for a day or so. I shall try to go to Saratoga if I am well enough—I want to see her about something and should like to leave very soon so the sooner the the sooner I can leave I can go over with the Dr and back or I can sleep over there some how, if Mrs Brown is there. I can sleep in the parlor or in the same bed. So do let me come—

With love to Aunt and Mrs Brown

With love, HETTY

Cousin Lydia Congdon sent her love. Mrs Loring is dead. Grand Mother is about the same.

[Address on the back] Electa Montague

576 (C—R. C. P.)

Dear Monte—

I am almost crazy I have had my old head achs and so discouraged I had tried to be so good—and to be deceived as well as have it done was to bad. I cared more about her not telling me. Mr M. came and gave her orders and it made me so sick I am not able to go to Anna's, so here I am alone and my head achs so. I did not want to tell Anna Aunts afairs, give my love to Aunt and tell her the carpenters are here as it will make her happy although it will take me two years at least to get over the shock. Why did you let her tell me so sudden you would scold me if I had treated her so—I am much obliged—about the collars but if I cry another ten days you will hardly know poor me and I have no health to go or get ready in, I went to see Mrs Price. I am not able to read or sew,

do Monte help me if you do not want me to live along as a invalid all my days—I never wanted her to give it up if it would give her pleasure but she hardly told anything about it when I had been so good—

With love

Hetty.

Please give my love to Mrs Brown. I am nearly desperate with the head ache.

[Addressed] Electa Montague
Monte.

(D—R. C. P.)

New Bedford Jan 4 64

Dear Hetty, your note cam safe. Very glad hear of your safe arrival your Aunt is so very glad that you have got such nice rooms to have them *warm to* we can talk about you almost see you made comfortable it gives us great joy. She thinks of that nice warm quilt you have to it is great pleasure to think of you and to have you dress nice and clean.

Aunt has gained some ever since you went away. I have to day put on that new sack that I made her have got her on to her 577 feet number of times by puting my hands under her arms chair in front I hope she will be so as to walk before long with help.

William P. H. son Isaac engaged Martha H Gideon sister Round Hills. We have very cold spell no snow. How do you prosper in reading your Bible. I do hope it will be the means of your conversion is the desire of your donnor and many other friends. Brother wife Electa your Aunt Mrs Brownell Mrs Brown and myself all send much love and wish you happy new year with health and true happiness is the desire of your friend ELECTA.

Heard from Grand mother well for her write again soon I will try to do better next time write sooner

(E—R. C. P.)

New Bedford May 18

Dear Hetty,

Your note was duly received very glad to hear of your safe arrival have not heard when your goods arrived your Aunt wants to know if they all arrived safe without marking,

Your Aunt gave you that blaek Cashmere shall that you wore last fall, expected you to take it, found you had not it is such nice suitable shall for you to wear, she wants you to have it and wear it and look like lady in your place not keep it she says she never shall wear it. She has not been as quite well since you left nearly the same. I hope to carry her out doors soon. She sends her love to you with all

the rest of us and hope you are getting house cleaning setting down your things finely write soon and very often. From your friend

Electa

Brothers wife and Electa's colds are very bad yet and Brothers to. O this awful war Oh how many are killed.

You must take good care of yourself and not get sick it is very hard work to get settled do it well and have your carpets fitted good your aunt says.

578

579 FRIDAY, *Aug.* 31, 1866.

Deposition of Abner H. Davis.

I, Abner H. Davis, of New York city, aged forty-six, merchant, on oath, say:

I lived in New Bedford up to the 14th of June, 1862. I lived there twenty-two years or more, prior to going to New York. I am a member of the firm Barling & Davis, commission merchants, doing business in Pearl street and Wall street, in New York. I am one of the executors of the will of the late Edward Mott Robinson. I know his daughter, Miss Hetty H. Robinson; have known her some twenty-five years. In 1865, I saw her father about every day, in New York, and saw her very frequently. I was often at his house that year, and previously.

Int. 1. What were your business relations with Mr. Robinson in New York?

(Objected to as incompetent.)

Ans. I was in some parts of his business. I was his confidential man, having the principal charge of those parts.

Int. 2. Were you ever cognizant of Mr. Robinson's executing a will; and, if so, when was it done?

(Objected to as incompetent.)

Ans. I was. It was on the 16th of March, 1865, at his residence, 19 West 26th street, in New York.

Int. 3. State whether, shortly before that time, you had any conversation with Miss Hetty H. Robinson; if so, when, where, and what was it?

(Objected to for form and substance.)

Ans. There was a conversation between us, about thirty hours, I should say, before the execution of that will. It was had in Miss Robinson's room in her father's house. Miss Robinson called me into her room, and said to me, If father talks about making his will to-night, I want that you should use your influence with him for him to give me and my children the property, and not to give much to charity. I want you to look out for me; I shall look out for you; I have named you for one of my aunt's executors. That is
580 the substance of the conversation. The next morning Miss Robinson said to me, Did father say anything about making

do Monte help me if you do not want me to live along as a invalid all my days—I never wanted her to give it up if it would give her pleasure but she hardly told anything about it when I had been so good—

With love

Hetty.

Please give my love to Mrs Brown. I am nearly desperate with the head ache.

[Addressed] Electa Montague
Monte.

(D—R. C. P.)

New Bedford Jan 4 64

Dear Hetty, your note cam safe. Very glad hear of your safe arrival your Aunt is so very glad that you have got such nice rooms to have them *warm to* we can talk about you almost see you made comfortable it gives us great joy. She thinks of that nice warm quilt you have to it is great pleasure to think of you and to have you dress nice and clean.

Aunt has gained some ever since you went away. I have to day put on that new sack that I made her have got her on to her 577 feet number of times by puting my hands under her arms chair in front I hope she will be so as to walk before long with help.

William P. H. son Isaac engaged Martha H Gideon sister Round Hills. We have very cold spell no snow. How do you prosper in reading your Bible. I do hope it will be the means of your conversion is the desire of your donnor and many other friends. Brother wife Electa your Aunt Mrs Brownell Mrs Brown and myself all send much love and wish you happy new year with health and true happiness is the desire of your friend ELECTA.

Heard from Grand mother well for her write again soon I will try to do better next time write sooner

(E—R. C. P.)

New Bedford May 18

Dear Hetty,

Your note was duly received very glad to hear of your safe arrival have not heard when your goods arrived your Aunt wants to know if they all arrived safe without marking,

Your Aunt gave you that blaek Cashmere shall that you wore last fall, expected you to take it, found you had not it is such nice suitable shall for you to wear, she wants you to have it and wear it and look like lady in your place not keep it she says she never shall wear it. She has not been as quite well since you left nearly the same. I hope to carry her out doors soon. She sends her love to you with all

the rest of us and hope you are getting house cleaning setting down your things finely write soon and very often. From your friend

Electa

Brothers wife and Electa's colds are very bad yet and Brothers to. O this awful war Oh how many are killed.

You must take good care of yourself and not get sick it is very hard work to get settled do it well and have your carpets fitted good your aunt says.

578

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Deposition of Abner H. Davis.

I, Abner H. Davis, of New York city, aged forty-six, merchant, on oath, say:

I lived in New Bedford up to the 14th of June, 1862. I lived there twenty-two years or more, prior to going to New York. I am a member of the firm Barling & Davis, commission merchants, doing business in Pearl street and Wall street, in New York. I am one of the executors of the will of the late Edward Mott Robinson. I know his daughter, Miss Hetty H. Robinson; have known her some twenty-five years. In 1865, I saw her father about every day, in New York, and saw her very frequently. I was often at his house that year, and previously.

Int. 1. What were your business relations with Mr. Robinson in New York?

(Objected to as incompetent.)

Ans. I was in some parts of his business. I was his confidential man, having the principal charge of those parts.

Int. 2. Were you ever cognizant of Mr. Robinson's executing a will; and, if so, when was it done?

(Objected to as incompetent.)

Ans. I was. It was on the 16th of March, 1865, at his residence, 19 West 26th street, in New York.

Int. 3. State whether, shortly before that time, you had any conversation with Miss Hetty H. Robinson; if so, when, where, and what was it?

(Objected to for form and substance.)

Ans. There was a conversation between us, about thirty hours, I should say, before the execution of that will. It was had in Miss Robinson's room in her father's house. Miss Robinson called me into her room, and said to me, If father talks about making his will to-night, I want that you should use your influence with him for him to give me and my children the property, and not to give much to charity. I want you to look out for me; I shall look out for you; I have named you for one of my aunt's executors. That is
580 the substance of the conversation. The next morning Miss Robinson said to me, Did father say anything about making

his will? I said to her that he had, and gave her a correct idea of what he had stated. (Complainant's counsel objects, and says that if any part of the conversation is given, he wants the whole detailed.) I told her that he talked about making the will, and said, I have decided to make my will. The next thing he said to me was, There must be some executors. He then asked me who I thought would be suitable. I told Miss Robinson then whom I had named—Thomas Mandell, Edward W. Howland, Edward D. Mandell. I am confident that I told Miss Robinson her father's comments on these. If I did, I told her as follows: That he said Mr. Mandell was a very honest, likely man, but he was too old; that he objected to Edward W. Howland; that he thought Edward D. Mandell would make a good one. Then I told her Mr. Robinson next said, We will let the matter rest for the present. Miss Robinson then spoke in high terms of the two Mr. Mandells, but said of Mr. Edward W. Howland, I don't want him for one, for he will cheat. I replied to that, I am surprised, Miss Robinson, to hear you say that, for I supposed Edward Howland stood as high as anybody in New Bedford (Edward W. Howland was the man referred to) for integrity. She then said to me, Don't you know that he cheated the government? Don't you know that, if he cheated the government, he will cheat me? I remember no more at present.

Int. 4. Whether anything was said at this time as to Mr. Edward W. Howland being on one side or the other side? If so, state what was said.

(Objected to for form and substance.)

Ans. There was one thing I do remember now. She said, speaking of her objection to Edward W. Howland, "You know he is on the other side; he is one that has to do with aunty's will."

Int. 5. State what the conversation was with Edward M. Robinson, to which you have just referred, which you did not communicate to Miss Robinson.

(Objected to by complainant as incompetent and impertinent.)

Ans. When Mr. Robinson asked me who I thought would make good executors, I named Miss Robinson first on the list; he said that she was not fit, and would not answer. That, I believe, comprises all.

581 Int. 6. Did you or not early in April, '65, have an interview with Edward M. Robinson and Hetty H. Robinson in his house at New York; and, if so, when; and what was said by each or any of you?

(Objected to as incompetent and for form.)

Ans. My best recollection and belief is, that there was no day from the early part of April up to the 10th when I did not see and talk with both of them. I am positive of this. I distinctly remember a conversation that took place at his house on the 5th or 6th of that month. On that day I called, as customary, on Mr. Robinson at his house; I learned that Mr. Robinson and Miss Robinson were in conversation in relation to her aunt's will. [I soon saw from the expression and conversation of Miss Robinson that something was being

discussed that was very unpleasant to her.] (The counsel for complainant here objects to the clause in brackets as not responsive and incompetent.) Soon after I entered, Miss Robinson retired. When I went in, she was expressing herself with much dissatisfaction. I remember she said somebody had cheated and taken advantage of her. (Complainant's counsel objects to the statements of witness as to the subject-matter of conversation, and to anything other than what the parties actually said.) Miss Robinson said she desired to see Mr. Eliot. He was in New York at that time—that I had told her. Mr. Robinson also said that he would like Mr. Eliot to call on him. Mr. Robinson said that he would not call; that, if Mr. Eliot had anything to do with making her aunt's will, he would not reveal to her or to him or any other person anything about it. He also said Hetty was in a great furor this morning, crying about her aunt's will. She has been fool enough to quarrel with her aunt about the will, and she won't get the property, and I hope she won't. She has got enough without it, and she is better off without it than she is with it. Miss Robinson said to me she wished that I would write a letter to Edward Howland, meaning Edward W. Howland, and to see if he would not call and see me, or make an appointment to see me, when he next came to New York. She also requested me, if he did come, to ascertain all I could about her aunt's will, and not to let him know the object of the inquiries. That is all I now remember of the whole conversation. Miss Hetty was present during the above up to the point where I have said her father said "she was in a great furor" at that time. She had just gone out.

582 (Complainant's counsel objects to all that part of the conversation which occurred when Miss Robinson was not present.)

Int. 7. If Miss Robinson stated in her conversation—recited above—where this will of her aunt's was made, state what she said.

(Objected to for form and substance.)

Ans. She said the will was made at the Round Hills.

Int. 8. Whether any circumstance enables you to fix the date of this conversation?

(Objected to for form and substance.)

Ans. The fact of Mr. Eliot being in New York with Mr. Simpson Hart attending the unitarian convention, which circumstance was known to me at the time. That took place the 5th and 6th of April, 1865, if my record is correct.

Int. 9. After you had agreed to write to Mr. Edward W. Howland, state whether Miss Howland ever spoke to you about it; and, if so, state how long after.

(Objected to as incompetent, and as assuming a fact not proved.)

Ans. [I wrote to Mr. Howland a day or two after she asked me,] and then in about a week she called my attention to the matter, and asked me if I had heard anything from Edward Howland.

(The counsel for complainant object to that part of the answer in brackets as not responsive.)

Int. 10. State fully what further conversations, if any, Miss Robin-

son had with you on the subject of her aunt Sylvia Howland's will; and, if any, how often were the interviews, and what did she say?

(Objected to as incompetent.)

Ans. Our interviews were numerous for six months from the time she first spoke to me about her aunt's will; I never had an interview with her when the subject of her aunt's will was not spoken of by her. At one of the interviews she expressed herself thus: There has been a will made at the Round Hills. I asked her how she knew there had been a will made. She said that Joshua Richmond's servant girl and Cornelius Howland's servant girl overheard the conversation at Cornelius Howland's, and that's the way she heard of it. At very many if not all of the interviews we had, she would inquire of me if I had found out anything about her aunt's will.
583 She wanted me to do all I could about the matter, and to help her break her aunt's will, if it was a possible thing. In all our interviews it was the same thing over and over again.

Int. 11. Please state up to what date did these interviews continue.

(Objected to as incompetent.)

Ans. Say to the 15th of November of that year, 1865.

Int. 12. During any of these interviews, of which you have testified, with Miss Robinson, state whether she spoke of any contract or agreement with her aunt about wills.

(Objected to as incompetent.)

Ans. I have no recollection of ever hearing her say anything about any contract or agreement; I don't believe she ever told me she had one. (Belief of witness objected to as incompetent by counsel for complainants.) I am positive she never did.

Int. 13. About September or October, 1865, state whether or not Miss Robinson had an interview with your partner, Henry A. Barling, and yourself, and, if so, what she said.

(Objected to by complainant's counsel for form and substance.)

Ans. We had an interview at our office, in New York, with her, about that time. She said she wanted we should pay her the ($140,000) one hundred and forty thousand dollars coming to her from her mother. We said that we did not know anything about any such claim as that, and we could not pay any such claim. We told her we would inquire of Mr. Thomas Mandell in relation to that, and we would talk to her again.

(The counsel for complainant here notes an objection that the above question and answer are impertinent.)

Int. 14. If she spoke of her right or title to this money, what did she say?

(Objected to for form and as incompetent and impertinent.)

Ans. She said that the money was hers, her mother gave it to her; that was all she said about her title to it.

Int. 15. Did Mr. Barling inquire about this at New Bedford?

(Objected to as above.)

Ans. Soon after, going to New Bedford on business, he had an interview with Mr. Mandell on the subject.

(The answer objected to as hearsay.)

Int. 16. After Barling's return, did you have an interview with Miss Robinson on the subject? If so, state what was said.

584 (Objected to as above.)

Ans. We did. We, Barling and Davis were both present, said to Miss Robinson that Mr. Barling had seen Mr. Mandell, and that she and her father had signed to Mr. Mandell a release for this property of $140,000; and that we had only to repeat what we had previously said, that we could not recognize any such claim or pay any such amount. She then said that she never had signed any such release to Mr. Mandell. Mr. Barling told her she had signed it, and that it was witnessed by Mr. Abner H. Davis. She said that if her name was there somebody else put it there; she never did it. That is all I recollect at that interview. We had another interview.

Int. 17. State what was said at that other interview.

(Objected to as above.)

Ans. I said to Miss Robinson, Since I saw you last I have been to New Bedford and had an interview with Mr. Mandell on this matter of the release; that I had read the release; that her name was there, and that my name was there as a witness to her signature; that if it was necessary at any time that I should stand by my signature, whether she did by hers or not. See then repeated that she never signed it; and, if her name was there, somebody else put it there. She said that she never would talk upon this matter with her father when he wanted to talk about it; that when he commenced to talk about it she always got up and left the room; it made her sick to talk about it. This finishes that interview. There were other interviews.

Int. 18. State what she said at those other interviews.

(Objected to as above. Question waived.)

Int. 19. If she ever alluded to a lawsuit in those interviews, what did she say?

(Objected to as above.)

Ans. Not in interviews, but in a letter.

Int. 20. Who was the person who came to your office once, threatening a lawsuit?

(Objected to as above. Question withdrawn.)

Int. 21. If any person came to your office upon this subject-matter, state who it was, and what relation, if any, if you know, he bears to the complaintant in this case.

(Objected to as above.)

585 Ans. A gentleman named Edward H. Greene, or Edward Greene, I am not certain which, came to our office and said that Miss Robinson wanted we should send a check up for $140,000. I do not know that he bears any relation to the complainant more than a stranger.

Int. 22. Do you know whether or not he is engaged to be married to Miss Robinson?

(Objected to as above.)

Ans. I do not.

Int. 23. Are they reported to be betrothed?

(Objected to as above.)

Ans. I have heard it repeatedly stated.

Int. 24. State any acts of business intimacy between these parties tending to show, or otherwise, whether they are engaged to be married or not, or any tending to show that he is or not acting as her business agent.

(Objected to as above.)

Ans. I can only state, as regards the intimacy of business, that Mr. Greene used to frequently come to our office alone, and frequently with Miss Robinson, to talk matters of business. He used frequently to make inquiries about investments, about stocks and bonds, what we had, and what they were worth, and what the probabilities were. He sometimes would come alone, bringing a note from Miss Robinson requesting him to talk about certain matters. (Complainant's counsel object to statement of contents of notes. [Supposing that he had a right to talk on these matters—whether with or without a note—from his relations to her, we did not question his authority, but talked with him freely]. (Clause in brackets objected to by complainant's counsel as not responsive, and otherwise incompetent.) On the day in which we paid Miss Robinson her legacy, left her by her father, nine hundred and ten thousand dollars, ($910,000,) Mr. Greene was there with Miss Robinson and helped her count the securities, and assisted her in taking them and the money away when counted. He also took the daily printed stock list, and compared with our valuations of the stocks we furnished at her election.

Int. 25. Please state the facts as to the execution of that release to Thomas Mandell of which you have testified, and the time and place.

(Objected to as above.)

Ans. In the spring of 1860, at the request of Edward M.
586 Robinson, I took this release from the counting-room to his house on Second street, and laid it before Miss Robinson, telling her that I came, at her father's request, to ask her to sign it; I laid it on the table before her. She took it up for a moment, looked at it, laid it down, went and got a pen, and then and there signed it; and I witnessed it.

(The following examination is stated by the counsel for complainant to be de bene esse, and not waiving objections heretofore taken to any parts of the examination in chief.

The counsel for respondents reply that they do not consent to the deposition being taken, or the examination made, in any other form than that prescribed by the rules, and the examiner reserving the whole matter for the court, the cross-examination proceeds as follows:)

When Miss Robinson first asked me for this $140,000, I did recollect about this release; I do not recollect whether or not I then told her.

Cross-int. 1. Did you not at some time say to Miss Robinson, or in her presence, that you had forgotten about this release, but upon

going to New Bedford your recollection was revived, or something like that?

Ans. Something like that, but I did not say that I had forgotten it; I said there were certain portions of it that I did not distinctly remember. I don't think I read the release entirely at the time it was signed. It was handed to me open; I knew its purport, as it had been talked over in the office. After she signed it I took it back and delivered it into the hands of Mr. Robinson himself. At the time it was signed, I should say I was with Miss Robinson from ten to fifteen minutes. I don't doubt that I was there ten minutes. I don't doubt that it was any more than I doubt my existence, though I did not take my watch to see if it was ten minutes or nine and a half. (This was in answer to a question: Are you sure you were there ten minutes?)

Cross-int. 2. What were you doing there ten minutes?

Ans. Standing up and looking at her, sir.

Cross-int. 3. Did you ever witness any other signature of Miss Robinson's?

(Objected to as immaterial.)

Ans. I don't remember any except that prior to my leaving New Bedford. I don't believe such a paper is in existence, or ever was.

587 Cross-int. 4. Did Mr. Edward W. Howland acknowledge the receipt of the letter you say you wrote to him?

Ans. He did not.

Cross-int. 5. When you say Miss Robinson wanted you to do all you could to help her break her aunt's will, what reply did you make to her?

Ans. I told her if I found out anything that I thought would do her any good, I would let her know.

Cross-int. 6. When did you first converse with Mr. Eliot or Mr. Stetson about this matter?

Ans. Two or three weeks since.

Cross-int. 7. When did you cease telling Miss Robinson that if you found out anything that would do her any good, you would let her know?

Ans. When she ceased to make the inquiries of me.

Cross-int. 8. When was that?

Ans. My belief is it was about the middle of November, 1865.

Cross-int. 9. When was it that Mr. Greene came to your office for a check, as you have stated?

Ans. Latter part of fall or first of winter of 1865.

Cross-int. 10. To whom did you first tell the story of these interviews with Miss Robinson that you have related here?

Ans. Mr. Stetson.

Cross int. 11. Did you go to his office, or did he come to you?

Ans. He came to me in New York, at my office. Then I stated to him substantially what I have stated here. I knew substantially the object of his call.

Cross-int. 12. Did you then tell Mr. Stetson that you had promised

Miss Robinson that if you could learn anything in her favor, you would tell her?

Ans. I did not. I did not then make any arrangements with Mr. Stetson about coming on here to testify. I did not inform him when I should probably be here. Nothing was said about my coming, or about taking my testimony in New York. I am one of the trustees, under the will of Edward M. Robinson, of Miss Robinson's property.

Cross-int. 13. Did you ever inform your ward, Miss Robinson, of this interview with Mr. Stetson?

(Objected to as assuming fact not proved and not true.)

588 Ans. I never did. I have not seen Miss Robinson since this interview with Mr. Stetson, I think, until I met her on the street yesterday. I do not recollect meeting her in Mr. Leary's office since then. I wrote to her once since, or rather Mr. Southmayd, my counsel, wrote for me. Mr. Southmayd is a lawyer in New York. I do not intend to say that Mr. Greene threatened me with a lawsuit, and have not said so—either by himself or any one else. In no way, shape, or form has he made any such threat that I am aware of. I went to Mr. Southmayd's office to get him to write the letter of which I spoke. I passed through New Bedford on Saturday last for the first time since I saw Mr. Stetson in New York. I was then on my way to Martha's Vineyard. I did not at that time see either Mr. Eliot or Mr. Stetson. Yesterday was the first time since that I saw either of them. I was in Mr. Pitman's front office. I do not know that they knew I was here. Mr. Thomas Mandell knew that I had gone to the Vineyard. I told him about how long I should stay. I went back to the Vineyard yesterday, and came back this morning.

(And the direct examination being resumed, witness says:)

I was summoned yesterday by the deputy marshal, and my fees paid for my attendance here to-day. I have a cottage at Martha's Vineyard, and my family are all there, and have been for ten or twelve days.

Adjourned to 9. 30 a. m., Saturday.

(When the deposition being read over to witness, in presence of the counsel and parties, the counsel for respondents make the following minute: "The respondents reserve the right to annex originals referred to, if they arrive before the conclusion of taking respondents' evidence."

Subsequently the defendant produces the papers referred to, and testifies:)

The signature to the release as a witness is mine, and the signature purporting to be Miss Robinson's I know to be hers, (marked F.—R. C. P., and the original being attached as an exhibit to another deposition, a copy is hereto annexed.) The letter (marked G.—R. C. P.) here is the one referred to, and the pencilling shows the date it was received at our office, July 26th, 1866.

(The complainant's counsel object to the production of both of the above papers as incompetent and inadmissible; and makes also the like objection to the examination in relation to them.)

ABNER H. DAVIS.

589 *Exhibits.*

[Copy of an original exhibit (marked F. R. C. P.)]

Know all men by these Presents that we Edward Mott Robinson and Hetty H Robinson both of New Bedford in the County of Bristol in consideration of One Dollar to us paid by Thomas Mandell of said New Bedford, Trustee under an Indenture of Trust bearing date the twenty second of February in the year Eighteen Hundred and twenty four between the said Edward M Robinson and Abby S, Robinson his wife and said Mandell and Gideon Howland, and of certain assignments and transfers and conveyances made by said Mandell as Trustee under the Indenture, of even date herewith have released and discharged and do by these presents release absolve and discharge the said Mandell from from all and singular the claims which we or either of us might otherwise have against him as such trustee or against the property real or personal in his hands as such, so that neither we or either of us or our heirs or legal representatives or the heirs or representatives of either shall ever make any claim or demand upon the said Mandell or his heirs or other legal representatives with respect to said trust estate or the said Mandell's execution of the trust and that if any claim demand or complaint be made in law or equity this instrument may be pleaded as a full perfect bar to the same

In witness of which we have hereunto set our hands and seals this fourteenth of April in the year Eighteen Hundred and Sixty

(Sgd) EDWD MOTT ROBINSON [L. S.]
HETTY H ROBINSON [L. S.]

Witness to Signature of
Edw Mott Robinson
WM E WATSON
Witness to Hetty H Robinson.
ABNER H. DAVIS

590 (G. R. C. P.)

[*In pencil*] Recd July 26th 1866.

Mr Davis

Dear Sir,

You have still My Mother's Money and my lawyers last year in Boston told me it was mine and as I have written to you about & now they write on for the papers I thought I would let you know as next thing it might be in open Court and as you said something about a refree and have it arranged quietly you said, it would suit me better also,—but do just as you think right and I will wait for an answer if you send or come to talk in a day or so—

I did not write them, but they wrote me—Mr Bartlett

In great haste

H. H. ROBINSON

[Address]
ABNER H DAVIS
70 Wall St
N. Y.

591 FRIDAY, *Aug.* 31.

Deposition of Edmund H Bennett.

I, Edmund H. Bennett, of Taunton, in the county of Bristol and State of Massachusetts, on oath say: That I am and have been for more than eight years past judge of the court of probate for said county.

Int. 1. State whether or not, in the summer of 1865, you were called upon by Miss Hetty H. Robinson, the complainant in this case, in relation to a will of Sylvia Ann Howland, then pending for probate before said court. If you were, state as nearly as you can all the circumstances connected with any interview you had with her, and the conversation, if any, you had with her.

(Objected to as incompetent.)

Ans. To the first part I should say that I was called on at my office in Taunton, before the hearing of the will, by a lady calling herself Miss Robinson. I have not seen her before or since that I remember. She resembled very much the lady pointed out to me, (the complainant, Miss Robinson,) but I did not scrutinize her face then very carefully. I would not swear that it was she. (The deponent here prays the judgment of the court, whether he ought to make further answer as to the conversation, the deponent believing that the lady in question called upon him because of his official position. The counsel for complainant object to the testimony, but the objection is overruled by the examiner and the question is reserved for the final determination of the court as to the admissibility of the testimony at the request of counsel for the complainant by the examiner.

The witness then continues:)

I received a letter from Miss Robinson some time during that summer in regard to the will. (Complainant's counsel object to all statements of contents of the letter.) I have not that letter; I presume it was destroyed soon after it was received. I have looked for it. I could not state all that was in it; it was two or three pages of note paper. The substance of it was, that she complained of some improper influence about the will upon her aunt. (Complainant's counsel object to the statement of a part only, and the substance of that only.) I remember in this note she asked me to ask the witnesses to
592 the will how much laudanum was given to her before the execution of the will; and at the close of the note she asked me to call and see her in New Bedford when I came here, giving the street and number where she resided. To that letter I made no answer. She afterwards called at my office. She made some allusion to the letter; said perhaps I thought it singular; that she was very much distressed or anxious; that she hardly knew what she wrote; and then she began to talk about the will. Here I must say, I cannot undertake to give her words. The substance of it was that somebody opposed to her had been influencing her aunt to make such a will as that. She specially, I think, charged it upon Dr. Gordon.

She said she thought Dr. Gordon had written her to keep away from her aunt, on the ground that it would affect her aunt's health injuriously for her to visit her, with the purpose to keep her away from her aunt's bedside when she made her will. I told her once or twice that I did not wish to have any conversation with her about the will; that I had got to decide it, and would rather not hear anything about it. She said she thought she had been wronged very much by somebody. I think she said that she had a will of her aunt's giving all the property to her. My impression is—I can't say certainly—that she said she would show it to me. I told her I did not care to see it. She went on to speak of the differences of the wills in substance; that her aunt would never have made such a different will, giving the property to others, if Dr. Gordon, or somebody, had not influenced her. That was the substance. I could not presume to give a single phrase that she used. She continued talking some time about it. Several times she used this phrase, that money was no object to her. She used it so many times that it rather attracted my attention, and I asked her what she meant by that. She said Dr. Gordon was either executor or trustee, whichever she called it, under the will, and if he could be put out of the way of being so (I don't give her language, I cannot give any word she did use, but that was the idea; I am quite sure she did not use these words that I have used,) she thought she could get somebody else to act in his place who would not charge any commissions, and I could have these myself. I looked at her, and asked her if I understood what she said, and she then repeated it substantially. I told her that I must decide the case upon the law and the evidence, and did not want to hear any more from her It got then to be nearly time for the noonday train to New Bed-
593 ford, and she went out of the office. She then went to my house and left some money there for a present to my child. As soon as I got home at noon I found it and had it mailed to her by next mail. I have never heard from or seen her from that time to this, that I know of.

(The whole answer is objected to by counsel for complainant as incompetent.)

Int. 2. Was anything said by her during that interview about a contract made by her aunt with her concerning mutual wills? If so, state it.

(Objected to for form and substance.)

Ans. I should think not. I have no recollection of anything

Int. 3. State whether the counsel upon either side engaged in this cause have made application to you to know what took place at this interview; and whether you have or not communicated what took place to them.

(Objected to for form and substance.)

Ans. Counsel on one side made application to me to know, and I declined to state. The counsel for executors made this application to me.

591 FRIDAY, *Aug.* 31.

Deposition of Edmund H Bennett.

I, Edmund H. Bennett, of Taunton, in the county of Bristol and State of Massachusetts, on oath say: That I am and have been for more than eight years past judge of the court of probate for said county.

Int. 1. State whether or not, in the summer of 1865, you were called upon by Miss Hetty H. Robinson, the complainant in this case, in relation to a will of Sylvia Ann Howland, then pending for probate before said court. If you were, state as nearly as you can all the circumstances connected with any interview you had with her, and the conversation, if any, you had with her.

(Objected to as incompetent.)

Ans. To the first part I should say that I was called on at my office in Taunton, before the hearing of the will, by a lady calling herself Miss Robinson. I have not seen her before or since that I remember. She resembled very much the lady pointed out to me, (the complainant, Miss Robinson,) but I did not scrutinize her face then very carefully. I would not swear that it was she. (The deponent here prays the judgment of the court, whether he ought to make further answer as to the conversation, the deponent believing that the lady in question called upon him because of his official position. The counsel for complainant object to the testimony, but the objection is overruled by the examiner and the question is reserved for the final determination of the court as to the admissibility of the testimony at the request of counsel for the complainant by the examiner.

The witness then continues:)

I received a letter from Miss Robinson some time during that summer in regard to the will. (Complainant's counsel object to all statements of contents of the letter.) I have not that letter; I presume it was destroyed soon after it was received. I have looked for it. I could not state all that was in it; it was two or three pages of note paper. The substance of it was, that she complained of some improper influence about the will upon her aunt. (Complainant's counsel object to the statement of a part only, and the substance of that only.) I remember in this note she asked me to ask the witnesses to
592 the will how much laudanum was given to her before the execution of the will; and at the close of the note she asked me to call and see her in New Bedford when I came here, giving the street and number where she resided. To that letter I made no answer. She afterwards called at my office. She made some allusion to the letter; said perhaps I thought it singular; that she was very much distressed or anxious; that she hardly knew what she wrote; and then she began to talk about the will. Here I must say, I cannot undertake to give her words. The substance of it was that somebody opposed to her had been influencing her aunt to make such a will as that. She specially, I think, charged it upon Dr. Gordon.

She said she thought Dr. Gordon had written her to keep away from her aunt, on the ground that it would affect her aunt's health injuriously for her to visit her, with the purpose to keep her away from her aunt's bedside when she made her will. I told her once or twice that I did not wish to have any conversation with her about the will; that I had got to decide it, and would rather not hear anything about it. She said she thought she had been wronged very much by somebody. I think she said that she had a will of her aunt's giving all the property to her. My impression is—I can't say certainly—that she said she would show it to me. I told her I did not care to see it. She went on to speak of the differences of the wills in substance; that her aunt would never have made such a different will, giving the property to others, if Dr. Gordon, or somebody, had not influenced her. That was the substance. I could not presume to give a single phrase that she used. She continued talking some time about it. Several times she used this phrase, that money was no object to her. She used it so many times that it rather attracted my attention, and I asked her what she meant by that. She said Dr. Gordon was either executor or trustee, whichever she called it, under the will, and if he could be put out of the way of being so (I don't give her language, I cannot give any word she did use, but that was the idea; I am quite sure she did not use these words that I have used,) she thought she could get somebody else to act in his place who would not charge any commissions, and I could have these myself. I looked at her, and asked her if I understood what she said, and she then repeated it substantially. I told her that I must decide the case upon the law and the evidence, and did not want to hear any more from her It got then to be nearly time for the noonday train to New Bed-
593 ford, and she went out of the office. She then went to my house and left some money there for a present to my child. As soon as I got home at noon I found it and had it mailed to her by next mail. I have never heard from or seen her from that time to this, that I know of.

(The whole answer is objected to by counsel for complainant as incompetent.)

Int. 2. Was anything said by her during that interview about a contract made by her aunt with her concerning mutual wills? If so, state it.

(Objected to for form and substance.)

Ans. I should think not. I have no recollection of anything

Int. 3. State whether the counsel upon either side engaged in this cause have made application to you to know what took place at this interview; and whether you have or not communicated what took place to them.

(Objected to for form and substance.)

Ans. Counsel on one side made application to me to know, and I declined to state. The counsel for executors made this application to me.

Cross-examination:

(The following is made de bene esse, as stated by David Thaxter, esq., as counsel for complainant, reserving all "rights," and not waiving any objection heretofore taken to any part of the questions and answers in chief.)

Cross-int. 1. You have no knowledge of whom you received the letter, have you, except what was said to you by the person calling on you?

Ans. No, sir; except so far as the letter itself gave me knowledge. The person who called made some allusion to what was in the letter. I do not know Miss Robinson's handwriting.

Direct resumed:

Int. 4. Whether any other lady called upon you with reference to that subject-matter except the complainant?

(Objected to as assuming a fact not proved.)

594 Ans. I have never had but one call—the one I described.

Int. 5. Is there any relationship between you and Dr. Gordon?

(Objected to.)

Ans. None that I am aware of.

Cross-examination is then resumed de bene, as above:

Cross-int. 2. Are your families in no way connected?

Ans. Not that I know of, sir. I never heard of any relation. I married Miss Crocker, of Taunton. I am not aware that she is in any way related to Dr. Gordon or his wife. I never saw his wife and do not know her.

Cross-int. 3. Did Dr. Gordon's sister marry your wife's uncle, George A. Crocker?

Ans. I believe she did.

EDMUND H. BENNETT.

595 *Deposition of Pardon Gray.*

I, Pardon Gray, of Dartmouth, in the county of Bristol and State of Massachusetts, aged fifty-six years, on oath say: From 1855 to 1865 I kept a livery-stable in New Bedford, and did hacking. I commenced keeping a livery-stable there in 1831. I have known Miss Sylvia Ann Howland for thirty years and more. For the last fifteen years of her life I, for the most of the time, furnished her carriages to ride. The last ten years I drove her myself. I devoted my time for those years pretty much to her. She rode out about every day when it was pleasant, and she was well enough. For the last six years I called every morning, when it was at all suitable for her, to sse what were the orders of the day. I have known Miss Hetty H. Robinson ever since she was a child. I gave up my livery-stable in September, 1865. I resided at Padanaram, a village in Dartmouth, about four miles from here, in the summer of 1865.

Int. 1. Whether at that place, you had a conversation with Miss Robinson in the summer of 1865? If so, state all that she said.

(Objected to for form and substance.)

Ans. She was at my house there some time in July, I think, of that year. She came in the morning with a gentleman she introduced as Mr. Green. They came in a buggy. They drove up to the door. I went out and invited them in, and they came in. Mr. Green commenced inquiring of Hetty, if it was not rather strange that Dr. Gordon had not called on her since the death of her aunt. Hetty said, May be it is conscience keeps him away. Then Hetty began to talk about the will; wanted to know if I ever saw such a will as that. I told her I never had seen any will, and didn't know anything about it. I meant, never seen anybody's will. She then said, You need not be afraid to say to me all you know about it, for you will have your legacy; and she didn't think her aunt had given me enough, she added. She went on talking about the will. This was in the same month with the funeral. It was in the latter part of July.

Int. 2. Did she or Mr. Green say anything about the matter of a trust?

(Objected to for form and substance.)

596 Ans. Mr. Green wanted to know of me what I had done that I should be put under a guardian—put in trust. Asked me if I should not have chosen to have had it right out, to have built a house or done as I saw fit with it. I said it would have been very pleasant to have had it so; I supposed Miss Howland thought she did it all for the best, as I generally spent all the money I made, and I finally concluded myself it was for the best. They requested me to come over and call upon them; said she would show me a copy of the will. She wanted me to set a day that I would come. I appointed a day—the next but one, I think. There was other conversation. Hetty seemed to be very much worried because Dr. Gordon was to be one of the trustees. (Counsel for complainant object to above as merely stating an opinion of witness.) She said I should have to pay him a percentage—five per cent.—for doing my business. Mr. Green spoke up and says, "You will have to go to Dr. Gordon, hat in hand, and ask him for your dividend. If it is not agreeable to him he will tell you to call again some other time." That is about the substance of it. I don't seem to think of anything more now.

Int. 3. State whether at this time she said anything about spending money about the matter; if so, what did she say?

(Objected to as incompetent.)

Ans. Not at this time.

Int. 4. At any time?

(Objected to for form and substance.)

Ans. I called on her at New Bedford, and she said she had a million of money that her father gave her. She meant to contest this will. She had money enough to break it, or something like that. She said, in substance, she meant to break the will if it cost her the million of money her father gave her.

Int. 5. At the interview at Padanaram, of which you have spoken,

was anything said about the Round Hill will? and, if so, state all that was said.

(Objected to for form and substance.)

Ans. Yes; there was. Hetty wanted to know if Mr. Eliot had been down to the Round Hills at the making or signing of the will, and who was with him. She asked what time they got there the evening of the making of the will, and who went up into her
597 aunty's room first. I told her that Mr. Eliot was there, and who was with him, and the time they got there; that I did not know who went up into the room first. She said they need not have been so secret about making the will, for she knew all about it soon after. She did not state how she knew. She said she didn't believe it was her aunty's will. She says, You know as well as I know that aunty never would have given my father a hundred thousand dollars, or George Howland fifty thousand.

Int. 6. If she said anything about her aunt's health at the time, state all that was said.

(Objected to as incompetent.)

Ans. She asked me if I thought she was capable of making a will. I told her I didn't see any reason why she wasn't. She understood everything as well then as ever she did since I knew her. She said she didn't think she was capable; that she didn't think she could keep awake long enough to hear it read. I told her I thought differently.

Int. 7. State whether or not Miss Robinson said anything about "keeping them out of it;" if so, what did she say?

(Objected to for form and substance.)

Ans. At New Bedford, when I called to see her, she said that she didn't expect to break the will, for Mr. Eliot made it, and she supposed it was made as strong as could be, but she meant to keep them out of it as long as she could—as long as the money could keep them out of it she meant to do it.

Int. 8. When you stated that you never saw a will of anybody's, what, if anything, did Miss Robinson say?

(Objected to as incompetent.)

Ans. She said she had half a dozen wills; that, if I would come over, she would show me a copy of her aunty's; and she had with her a copy of her father's will, which she wanted to show me. She said she had had, or had, a half a dozen wills, I don't remember which phrase she used.

Int. 9. What, if anything, did Miss Robinson or Mr. Green say about horses at this interview?

(Objected to for form and substance.)

Ans. I heard nothing.

Int. 10. Whether they talked in that interview upon any
598 other subject than wills? If so, state what was said by Miss Robinson or Mr. Green.

(Objected to as incompetent.)

Ans. Wills was the subject; I remember nothing else. It lasted about half an hour.

Int. 11. State all that took place at the New Bedford interview, if there is anything that you have not already stated.

(Objected to as incompetent.)

Ans. I believe I have stated the substance of it.

Int. 12. Whether at either of these interviews anything was said by Miss Robinson about a contract or agreement with her aunt?

(Objected to as incompetent.)

Ans. No; there was not.

Int. 13. You have stated that Miss Robinson stated that she "meant to break the will," or words to that effect; and also that she said that "she did not expect to break it." Will you say whether or not these statements were made at different points of the same interview or at different interviews?

(Objected to for form and substance.)

Ans. They were made at different times of the same interview. She first said she didn't expect to break it; and then, after talking a little time, she said she meant to break it if she could.

Int. 14. In 1860 who drove Miss Howland to Round Hills when she went?

(Objected to as immaterial.)

Ans. I drove her whenever she went. I have an account of the number of times she went there during that year. (The witness here refers to bill made out in his own handwriting and rendered in October of that year, and another rendered in July of that year—both having been at the time rendered to Mr. Mandell, the business agent of Miss Howland, and paid by him—for the purpose of refreshing his recollection, to which counsel for complainant object, that it does not appear that these were original entries, and because witness has stated that the bills were made out when they were rendered and not when the services were performed, and as otherwise incompetent for the purposes for which they are shown the witness;
599 and desire note to be here made of this. The counsel for respondents thereupon, not waiving the right to use any paper in the handwriting of the witness for the purpose of refreshing his memory, request the witness to refer to the original entries, if witness has them with him, and having so referred, to state the times as before inquired of. The witness refers to his book of original entries, and then answers thus:)

First. May 12th, I went to the Round Hills and returned. I mean we went.

May 17th, we went and returned same day.
June 4th, we went and returned same day.
" 7th, we went and returned same day.
" 20th, we went and returned same day.
" 29th, we went and returned the third of July.
July 12th, we went and returned the sixteenth of July.
" 21st, we went and returned the twenty-fourth of July.
August 10th, we went and returned the thirteenth of August.
" 27th, we went and returned the same day.
" 30th, we went and returned the same day.

September 11th, we went and returned same day.
" 14th, we went and returned same day.
That was her last time she went down that season.

Int. 15. How far was it, and describe the drive?

(Objected to as immaterial.)

Ans. It is seven miles from her house. We went in a hack; generally slowly, by her request. It was in a hack exclusively used for her; that is, as a general thing. We were generally two hours driving down. We generally started in the forenoon, about half past eight in the summer; when cooler, about ten. We had to open three or four gates. When we returned the same day we generally started about three o'clock if it was cold; if it was warm, about half-past four. (Witness continues:) In this year, 1860, the dinner hour at Round Hills, when Miss Howland was there, was at one o'clock. When Miss Howland returned the same day, I passed the day at the place. I dined there. I sat at the table with her when she was down—at that time she was always able to be down. I suppose I generally saw her half of the time or more when she was at the Round Hills.

When Miss Robinson was there she dined at the same table
600 with us. Miss Robinson went with us sometimes; I should think not more than three times that summer. She went in the carriage.

(Complainant objects to all the testimony since the last interrogatory as immaterial.)

Int. 16. Did Miss Robinson or not stay at Round Hills this year over night at any time of these visits? If so, how many times, as near as you can recollect? State your best recollection on the subject.

(Objected to for form.)

Ans. I can't recollect of her staying there any one time when she staid over night.

Int. 17. When Miss Howland staid over night, what became of Miss Robinson, when she had been there during the day?

(Objected to as incompetent.)

Ans. She didn't go, if she didn't stay. When Miss Howland staid, I went back with the carriage and horses, and went for her when she wanted me to. If Miss Howland staid, and she went with her, why she, I mean Miss Robinson, stayed. I have no recollection that year of ever bringing her back alone, without Miss Howland.

Int. 18. Have you any recollection as to whether Miss Robinson went with Miss Howland either of those four times when Miss Howland did stay over night, in 1860, as you have stated?

Ans. I cannot recollect that Miss Robinson went with her either of those times.

Int. 19. When Miss Howland was not at Round Hills in 1860, at the times you have stated, state whether you drove her about; and, if so, how often, beginning with May 12th and closing with September.

(Objected to as immaterial.)

Ans. May 14th, Monday, I drove her around. (We were in all these drives generally about two hours.)
May 15th, I drove her around also.
May 16th.
May 18th.
May 19th.
May 20th (Sunday) didn't go.
May 21st.
May 22d.
May 23d.
601 May 24th.
May 25th.
May 26th.
May 27th was Sunday; didn't go.
May 28th.
May 29th.
May 30th.
June 1st.
June 2d.
June 5th.
June 8th.
June 9th.
June 11th we went three times.
June 12th.
June 13th.
June 14th.
June 15th.
June 16th.
June 18th.
June 19th.
June 22d.
June 23d.
June 25th.
June 26th.
June 27th.
June 28th.
July 6th.
July 7th.
July 9th.
July 10th.
July 11th.
July 17th.
July 18th.
July 19th.
July 20th.
July 25th.
July 26th.
602 July 27th.
July 28th.
July 30th.

July 31st.
August 1st.
August 2d.
August 3d.
August 4th.
August 6th.
August 7th.
August 8th.
August 9th.
August 14th.
August 15th.
August 16th.
August 17th.
August 18th.
August 20th.
August 21st.
August 22d.
August 23d.
August 24th.
August 25th.
August 28th.
August 29th.
August 31st.
September 1st.
September 3d.
September 4th.
September 5th.
September 6th.
September 7th.
September 8th.
September 10th.
September 12th.
September 13th.
September 15th.
603 September 17th.
September 18th.
September 19th.
September 20th.
September 22d.
September 24th.
September 25th.
September 26th.
September 27th.
September 28th.
September 29th.

Int. 20. State whether Miss Howland ever spoke in your presence about Miss Robinson; and, if so, state what she said about her.

(Objected to as incompetent.)

Ans. She spoke a great many times about her.

Int. 21. About her confidence in her.

(Objected to for form and substance.)

Ans. One time that I carried a letter to Round Hills for Hetty and gave it to her as soon as I got there, Miss Howland said that she was very sorry that I had detained that letter so long in my possession, for Hetty made a great fuss about it. I asked, "What letter?" She told me the one I gave Hetty that day that I carried them all down from New Bedford—Miss Howland, Hetty, and Miss Montague. I told her that I received the letter a few minutes before we started from New Bedford, with the request to give it to her when we arrived at Round Hills, and I did so. She seemed very much astonished, and said that she couldn't believe Hetty, or shouldn't believe her, if she told her such untruths as those.

Int. 22. If she ever said anything about Miss Robinson being like other girls, give her words exactly as you can.

(Objected to for form, and as incompetent and impertinent.)

Ans. She said she would give a great deal if Hetty was like other young ladies. She said to me, "like your girls, or a great many others." She said she plagued her a great deal about her dress, going down street looking so; she said it was a town's talk.

Int. 23. Did Miss Howland or not ever give you a pair of gloves; if so, when; and what did she say?

604 (Objected to as above.)

Ans. Yes; about 1861; not sure of the date; she gave me a pair of gloves—thick buckskin gloves, which, she said, belonged to her father; and she wanted me to have them, and didn't want me to let Hetty know that she gave them to me, for she would only make a fuss.

Int. 24. State whether Miss Howland ever said anything to you concerning Miss Robinson's treatment of Mrs. Brownell; if so, state all that she said.

(Objected to as above.)

Ans. She never did, that I remember.

Int. 25. We refer to an assault upon Mrs. Brownell, whether Miss Howland said anything about that.

Ans. Not to me.

Int. 26. Anything said to you by Miss Howland about giving Mrs. Brownell a thousand dollars?

(Objected to as above.)

Ans. No.

Cross-examination:

(Cross-interrogatories propounded by David Thaxter, esq., of counsel for complainant.)

When I gave up keeping a livery-stable in 1865, I had three horses of my own, and a hack and a carryall coach, wagon harnesses, etc. For the five years preceding that I had had a small stock, five or six horses, and carriages to fit. Since September, 1865, I have been farming, gardening, raising pigs and chickens. I have had, in all, about seven acres that I have occupied. My family has consisted of three children generally—sometimes four; my wife is not living.

Cross-int. 1 Have you received any money from any source, except this farm, since September, 1865? If so, from whom?

(Objected to as immaterial.)

Ans. Yes; from people that owed me, from sales of some old stock that I did not sell in September. I do not know as I have any other.

Cross-int. 2. Have you received any money from either of the persons named as executors or trustees under the will of Miss Sylvia Ann Howland, since her death?

605 Ans. I received the amount of my bill against her estate for hacks in attendance while she was sick, and for the carriages furnished at her funeral—nothing else. From 1860 down, Miss Howland did not go out to ride when it was stormy; she did not for the last ten years of her life. I was requested by Miss Howland to call on her every day. When I came—whether I called in a stormy day—depended on circumstances. If it looked as if it might not storm all day, I would call in and advise with her about it. It was my principal business to drive her out for the last ten years of her life. She would ride out twice almost every pleasant day in summer, from 1855 to 1856 and 1857. Afterwards, generally but once a day. When she rode but once a day, the length of her ride varied greatly from day to day—sometimes four hours, sometimes only an hour and a half. For the last five years my bills for her riding averaged about a thousand dollars a year. She always rode in the same hack after I had one built for her. I did not often let it to others. It was built about 1859, I should think. I remember refusing to let it when applied to, although I knew Miss Howland was not going to use it. I refused because I kept it for her use, and did not like to let it except in case of necessity, funerals, etc., when, if I knew she would not want it, I would sometimes go with it. Mr. Mandell furnished me with the money for this hack. When she died, Mr. Mandell sold it at auction on account of the estate. I had all my own stock mortgaged for some years. When this hack was sold, one of the horses was sold to Wm. Coffin, a hackman; the other horse had broken his leg. These horses belonged to me. (The further cross-examination of the witness is stated to be de bene esse by complainant's counsel, and reserving all their rights, and not waiving any objections heretofore made by them to any part of the examination in chief.) I had only two interviews with Miss Robinson after her aunt's death—one at Padanaram, and one at New Bedford, as I have stated. Mr. Green was not present at the New Bedford interview. I am sure of that. It was at Miss Howland's house on Eighth street three or four days after the Pandanaram interview. It lasted say twenty minutes with her alone; then a New York lady was introduced. I think her name was Minell. The interview continued ten or fifteen minutes after she came in.

Cross-int. 3. Can you remember what part of the interview which you have narrated, if any, took place after Mrs. Minell came in?

606 Ans. I don't think any part of the conversation which I have related.

Cross-int. 4. Then you did not state all that occurred between you and Miss Robinson at this interview, did you?

Ans. When Mrs. Minell came down, Hetty introduced her to me, and they both went to talking about the will. Do you want to know what Mrs. Minell said?

Cross-int. 5. (The question is here repeated to the witness as above.)

Ans. I stated all the conversation between me and Miss Robinson that I could recollect. I had not seen any wills of my father or grandfather prior to this interview at Padanaram. I don't know that there had been any trouble about the will of my father-in-law, Wanton Howland. I never saw the will.

Cross-int. 6. What book, if any, did you look at and read from when you made your statement about the times you took Miss Howland out to ride?

(Objected to, so far as the words "read from" are concerned, as assuming a fact not proved.)

Ans. The first statement I made was made from a memorandum in my hand. The other I took out from this book—a pocket diary for 1860. The memorandum I took from the account before referred to. The account was taken from this book. I did not keep any entries about the other branch of my business in this book. I made no original entries about my account with Miss Howland in any other book. I always carried this book in my pocket. I never posted these entries on any other book. They were made in pencil as they are now.

Cross-int. 7. Have you any recollection of your stating to any person, and whom, or of being asked by any person, and whom, the days or times when you took Miss Howland to ride in 1860, after that year? If so, when first?

Ans. Not until within a few weeks of this time. Then I stated it to Mr. Stetson. I did not give him the particulars; never have given anybody the particulars till to-day.

Cross-int. 8. After the lapse of six years, are you able to state independently of this book, any day that you took Miss Howland out to ride in 1860, during the period covered by your answer to the nineteenth question?

Ans. I remember coming home the 3d of July.

607 (At this point of the examination the counsel for respondents stated they ascertained that they had omitted a matter of their examination in chief, and the cross-examination was suspended without objection on the part of complainant's counsel, for the purpose of completing the examination as desired by the respondents.)

Int. 27. Have you brought with you your book of 1862, containing your entries of that year?

Ans. I have it here.

Int. 28. Please refresh your recollection by looking at it, and state on what days from the 1st of January, 1862, to the 15th or 16th of that month you took Miss Howland out to ride, and if you have any means of knowledge about the length of those rides.

(Objected to as incompetent.)

Ans. I took her out to ride
January 1st, 1862.
" 2d, "
" 4th, "
" 7th, "
" 9th, "
" 10th, "
" 11th, "
" 13th, "
" 14th, "
" 17th, "
" 18th, "
" 20th, "
" 21st, "

According to the charge these rides would be about two hours. The ride of Jan. 11, inquired about, I should say from the charge was about two hours' ride. We generally started about half-past 10 a. m., in the winter. The entries I have looked at are original entries made at the time. The entries for the entire year are in that book.

Cross-examination resumed, de bene esse, as above:

Cross-int. 9. What rates did you charge Miss Howland in 1860 and 1862?

608 Ans. I charged so much for the job. I charged what I thought was right.

Cross-int. 10. How are you able to say what length of time you rode on Jan. 11, 1862, by the charges, as you have stated?

Ans. I have charged $4 00; that is the average for a two hours' ride. I usually charge about two dollars an hour. I charged about the same in 1860. In these rides it was often customary for Miss Howland to get out in the woods to take the fresh air and to rest. When the rides were long, I did not charge the rate above.

Cross-int. 11. What days do you find in 1860, during the period of which you have spoken, except on the Round Hill days, that you judge from the charges in your books you were out four hours?

Ans. I should say Monday, July 30th, the 31st, and Friday, Aug. 1st, were long rides; the rest would be common rides—about two hours. Sometimes we went faster and sometimes slower. Miss Howland was always speaking of going slow; she wanted to be out to have the air.

Cross-int. 12. Have you any recollection, independent of that book or memorandum which you have referred to, of any days or places when and where Miss Howland rode in 1860, during the period covered by your direct examination?

Ans. I couldn't say; I could remember the 3d of July; but as to the rest, if I had nothing to refer to, I could not remember one day from another.

Cross-int. 13. During the period inquired of in 1860, does your book state where you rode?

Ans. Most of the charges during that time state where I went. It

appears in this way: "Wednesday, May 9th, 1860, Sylvia A. Howland, to hack, H. R., 3 50. Friday, 11th, Sylvia A. Howland, to hack, H. R. and N. R., $4 25. Thursday, June 7, Sylvia A. Howland, to hack, R. H. and toll, $6 50." These are specimens of the entries. H. R. means Head of the River; N. R. means Nash Road; R. H. means Round Hills.

Cross-int. 14. Independent of the book, do you recollect the fact of taking Miss Howland to ride on the 11th day of January, 1862?

Ans. I do not.

Cross-int. 15. Are the entries in the book of 1862, so far as inquired of, in pencil, as are the entries of 1860?

Ans. Both are in pencil.

609 Cross-int. 16. In making your statement about the rides of January, 1862, did you read from that book so far as the dates are concerned?

Ans. I did.

Cross-int. 17. Is the same true as to 1860, that you read from the book or from your memorandum as to dates and places?

Ans. Yes.

Cross-int. 18. When did you cease taking Miss Howland out to ride pleasant days, when she was in town?

Ans. I cannot tell. I should think she did not ride out the spring before she died. I cannot tell without looking at my book. Referring to that, I find I did not take her out to ride after Dec. 14, 1864. Down to that time I was in the habit of calling on her pleasant days, to see if she wanted to go out. She usually went on pleasant days.

Cross-int. 19. In 1862 does your book state where you took Miss Howland to ride?

Ans. As a general thing it does not.

Cross-int. 20. How about your book of 1861?

Ans. As a general thing, it is not down where she went.

Cross-int. 21. In the examination you have made here of the books of 1861 and 1862, in answering the questions, have you found any instance where the books show where you took Miss Howland to ride?

Ans. I have. In 1862. It is Aug. 26—hack round the road and round town. Round the road means round the Clark's Point road. In 1861, June 5, I find an entry—Hack twice. Dined with Miss Thornton.

Cross-int. 22. Have you found in these books of 1861 or 1862 any mention of going to Round Hills?

Ans. April 11, 1861, is an entry of journey to Round Hills. June 17, 1861, I find the entry, "hack to Round Hills and back the same day." June 21, 1861, also, hack to Round Hills and toll, four days. June 26, 1861, says, "To hack and toll, Round Hills, four days;" July 5, 1861, says, hack and tolls to Round Hills, absent nine days; May 29, 1862, shows hack to Round Hills; so also June 3, 1862; so also June 24, five days at Round Hills; and June 30, at Round Hills. July 24 and July 28 also mention the Round Hills. I find another in 1861, Oct. 1, Round Hills, two days. Also under date Sept. 30, 1861, the entry is, "Round Hills, gone seventy-one days."

Cross-int. 23. When was it that this scene about the letter of which you testified, in answer to question number twenty-one, took place?

610 Ans. It was in 1862, in August or September, to the best of my recollection.

Cross-int. 24. Are you a legatee under the will of Miss Howland called the Round Hill will?

Ans. I am.

Cross-int. 25. Did Miss Howland keep horses herself, in and after 1860?

Ans. I don't know of any, except what she had at the farm.

Direct examination resumed:

Int. 29. After refreshing your memory by looking at the original entries in the books, as you have done, have you or not any doubt that the facts occurred as stated by you, and that you took Miss Howland to ride on the days and to the places stated?

(Objected to for form and substance.)

Ans. I have no doubt about it.

Int. 30. State any reason that occurs to you why, after 1860, you were less careful, if you were so, in entering the places to which you drove than you were during that year.

(Objected to as above.)

Ans. There was no reason; only my carelessness.

Int. 31. After the death of Miss Howland were the horses which you drove when you took her out to ride sold by Mr. Mandell, or how were they otherwise disposed of?

(Objected to as above.)

Ans. The pair of horses which Miss Howland bought proved restive, and she did not dare to ride after them, so I put them into my work, and took my horses and did her work; after her death, those horses—the ones that were bought by her—were sold by Mr. Mandell. The horses were all kept at my charge.

Int. 32. When you began to attend Miss Howland in person, what business were you carrying on, and who attended to it for you?

(Objected to as examination of matter not opened by cross-examination.)

Ans. I was carrying on a large livery-stable on Union street, in company with Messrs. Puckard & Allen. My partners there attended to it—what was attended to after that.

PARDON GRAY.

611 WEDNESDAY, *Sept.* 5.

Deposition of Fally B. Brownell.

I, Fally B. Brownell, of New Bedford, in the county of Bristol and State of Massachusetts, aged seventy-two years, on oath say: That I went to live with Miss Sylvia Ann Howland, in 1842, at her house, then in Water street—she and her father then living together. Mrs. Ruth Howland, Miss Sylvia's grandmother by marriage, was house-

keeper, and I assisted her; she was housekeeper till the fall of 1847. She was then taken sick, and went away. About that time Miss Howland's father died, and Mrs. Ruth Howland never came back as housekeeper; she came only to make long visits. In 1848 Miss Howland moved up on Eighth street, and there lived till she died, and I was her housekeeper all the time.

Up to the fall of 1847, Miss Howland's father was the head of the family. His name was Gideon Howland. Mrs. Ruth Howland was the female at the head. Miss Hetty H. Robinson went to Sandwich to school in 1845, I think. She was living there at the house on Water street when I went there, and did not go away till she went to school. I am not certain that the year was 1845. Before she went away, she always slept in the room with her grandmother, Mrs. Ruth Howland, and, if she was sick, she took care of her—the principal care of her. Miss Sylvia Ann Howland was living there; her health was not very good, but she rode out and walked out. After Gideon Howland's death, in 1847, we all lived there till 1848; then we moved up to Eighth street. Miss Robinson was at Sandwich school when Gideon Howland died, and when we moved. When she came back, she went to her father's. [Her mother told me that would be her home.]

(The last statement objected to by complainant as hearsay.)

Ruth, after Gideon's death, went to Dartmouth and lived there till she died; she, however, made long visits, as I have stated. Before 1847, Mr. and Mrs. Robinson were living on Second street. Mrs. Robinson's health was not very good, but it was so that she went out. Miss Robinson's stay at Gideon Howland's commenced before I went there. Her mother told me she went there before she was two
612 years old. (Objected to by complainant as hearsay.) She said she herself was very sick, and Hetty was sent down there with a girl to stay. Miss Howland first commenced to keep house that fall, after her father died. In March following she moved to Eighth street, and kept house there.

Int. 1. After 1848, up to the death of Mrs. Robinson, where did Miss Robinson live?

Ans. At her father's. I lived with Miss Howland, as her housekeeper, eighteen years. My duties, for a number of years, included the cooking; I also waited upon Miss Howland. For a number of years she had no nurse. Miss Howland always paid out money herself as long as she was able to go to her trunk; after that she gave me the keys—I think in 1859 it was—and told me to keep them, and not give them to any one unless she told me to. When she wanted me to go to the trunk she always sent for me to come up stairs and bring the keys and go to the trunk.

Int. 2. After you had charge of the keys who, if any one, went to the trunk beside yourself?

(Objected to as immaterial and incompetent.)

Ans. No one. I kept the keys locked up in a trunk, and the trunk was in a clothes-press, and that was locked and the key kept in my pocket. I was never away but a few hours at a time for over two years before Miss Howland's death. I never went to the trunk unless

by Miss Howland's orders. Her money was kept in this trunk, and she used to tell me when to go and get it till a few months of her death; then she told me to take what money was in the trunk into my possession, for it disturbed her for me to come in and go to the trunk, she was so sick. She told me to buy things for the family with it. When I did go out, the key of the clothes-press to which I have referred, was always carried with me. The trunk had some clothing, some jewelry, and some papers. It was quite a large trunk, an old-fashioned trunk, some two feet or so long—had been covered with hair, now pretty much worn off. It was kept in the closet in Miss Howland's room, where she always stayed. The closet was a small one, side of the fireplace; it was large enough for several persons, however, to get into.

Int. 3. Some time after Mrs. Robinson's death, were you requested to put something into that trunk? If so, state all the circumstances.

(Objected to as incompetent.)

613 Ans. Miss Montague came down and said Miss Howland wanted I should come up and bring the keys. I went up. Miss Howland says, "I want you to put this paper in the trunk for Hetty;" and I did; it was a white paper. Miss Howland said something about its being a deed when I came out of the closet. I do not remember all she said.

Int. 4. Did you at Miss Howland's direction ever put in any other paper?

(Objected to for form and substance.)

Ans. I did; can't say when. Miss Montague came and said Miss Howland wanted I should come up and bring the keys. I went up, and Miss Howland said she wanted that I should put that paper in the trunk for Hetty. I took the paper and put it in the trunk; I think it was a yellowish envelope; I did not take much notice. Miss Robinson was there, and she handed me the paper; I took the paper from her hand. Miss Montague was in the room with Miss Howland when I went up. I stepped into the closet, opened the trunk, put in the paper, locked the trunk, and came directly out.

Int. 5. Except these two papers, have any papers ever been put in the trunk by you since Mrs. Robinson's death, by Miss Howland's directions?

(Objected to as incompetent.)

Ans. No; bills and receipts she had put in once a year; I paid these; I paid as bought, but took bills. The white paper I referred to was put in first, the yellow one afterwards. The bills and receipts were kept by me before they were put in the trunk.

Int. 6. Soon after the death of Mrs. Robinson, state whether or not Miss Robinson ever said anything about her mother's property; if so, state it.

(Objected to as incompetent.)

Ans. She did not to me; I did not hear her say anything.

Int. 7. If Miss Robinson said anything to you about her father's keeping her mother's property, what was it?

(Objected to for form and substance.)

Ans. She did not.

Int. 8. If Miss Robinson said anything to you about her father being wrong in keeping her property, state it.

(Objected to as above.)

614 Ans. No; she did not to me.

Int. 9. When did you give up the keys to that trunk?

Ans. The night after she was buried. I remember it, because I felt very badly that they should be called for so soon after Miss Howland was carried out of the house. Miss Montague told me Miss Robinson sent for them, and I went and carried them to Miss Robinson. She took them and went to the trunk. Miss Montague and I stood at the door of the closet. She went in and went to the trunk; I did not see what she did; I went down stairs in a very few minutes. This was the first time after Miss Howland's death that the trunk was opened. I had not opened it, nor been asked by any one to open it, after her death before this. After Miss Robinson took the keys of the trunk I never saw them again. I never went to the trunk with her after the time above named. I only went that once with her after her aunt's death. I did not hand any papers from that trunk to Miss Robinson at any time after her aunt's death; she did not ask me for any. Mr. Greene was not present, either in the room or in the closet, at the time spoken of above.

Int. 10. State whether you ever said anything to Miss Howland about making her will.

(Objected to for form and substance.)

Ans. I never did.

Int. 11. Or ever heard any of the nurses or inmates of the house.

(Objected to as incompetent.)

Ans. No; I never did.

Int. 12. State whether Miss Robinson ever told you to whom she thought Sylvia would leave her house, or any talk of that kind.

(Objected to as incompetent.)

Ans. Once—a night or two after her aunt died—she said she didn't think her aunt had given me enough, and she should have thought she would have given Miss Montague and I the house; that was all.

Int. 13. State whether Miss Howland said anything to you about remembering you in her will, or anything to that effect.

(Objected to as incompetent.)

Ans. The February before she died she had an ill turn, and when she revived she said, "I have remembered you in my will; I want you to make yourself comfortable with the money I have left

615 you; you will miss me when I am gone, for Hetty never will treat you as I have treated you."

Int. 14. How often did she speak about it?

(Objected to as incompetent.)

Ans. She spoke of it once or twice afterwards.

Int. 15. Whether she said anything about "mercy," and, if so, what?

(Objected to for form and substance.)

Ans. I do not recollect.

Int. 16. If she said anything about Hetty, state what.

(Objected to as incompetent.)

Ans. Nothing more at that time; she was very low.

Int. 17. State how Miss Howland regarded and treated you; state any facts showing this.

(Objected to as incompetent.)

Ans. She always treated me very kindly, and in sickness there was nothing that I needed that I did not have. We never had an unpleasant word all the time I was with her.

Int. 18. What were your own feelings towards her?

(Objected to as incompetent.)

Ans. I was very much attached to her.

Int. 19. State any facts within your knowledge, tending to show whether Miss Howland entertained any fears that her life would be shortened by any acts of yours or Miss Montague's or any other person in attendance on her, or otherwise.

(Objected to for form and substance.)

Ans. I never heard her say any such thing at any time; she almost always had me prepare all the nourishment for her.

Int. 20. Did Miss Robinson ever prepare any of her food while there?

(Objected to as immaterial.)

Ans. I never knew her to.

Int. 21. What feelings were expressed, if any, towards Miss Montague by Miss Howland? State what, if anything, she said.

(Objected to for form and substance.)

Ans. Miss Howland thought a great deal of Miss Montague. She could not bear to have her go away hardly out of her sight.

Int. 22. Were you ever sent for to stay with Miss Howland when Miss Montague went out?

616 Ans. Yes; I always staid with her when Miss Montague went out. Towards the last of her sickness—when she had two nurses beside Miss Montague—I did not always stay with her.

Int. 23. Whether she said anything to you about being left alone with Hetty? If so, state it.

(Objected to for form and substance.)

Ans. I don't recollect she did.

Int. 24. If she said anything to you about your leaving, state what it was.

(Objected to as incompetent.)

Ans. Once while Miss Howland was over to the farm, Miss Robinson told me that she did not want me, and that Miss Howland did not want me, and that I should go away. (Objected to by complainant's counsel as not responsive and otherwise incompetent.) I told her I should not leave till I saw Miss Howland and had a talk with her. I told her Miss Howland hired me, and that I did not think she had a right to turn me away. She then said to me, "Take your duds and clear out." Those were the words she used. (All this conversation objected to by complainant as above.) When Miss Howland came home she sent for me, and told me that Hetty, soon after she came

into the house, had come to her with complaints against me, that it was very trying to her; and I asked her what Hetty said, and she said that she said I gave her all the tough steak and kept the best part in the kitchen. I told her Hetty had told me to go away since the had been gone, and that I thought I had better go as I could not give satisfaction. She replied, "You give satisfaction to me." I told her if she got some one else perhaps it would be easier for her. She said she could not let me go away; that Hetty wanted to rule, but that she should not; it was her house, and she would have her own way. She asked me to live with her, till she told me to go away, and to be a friend to her. She added, If Hetty lives she will see the time when she will be sorry for her treatment to me and you. [Miss Howland made me a present, a few weeks after this conversation, of a thousand dollars. She went over to the Round Hills soon after the time to which I have referred, and while there gave me this money. Mr. Mandell brought the money to me.]

(The clause in brackets objected to as not responsive and incompetent by complainant's counsel.)

617 Int. 25. What, if anything, did Miss Howland say to you at that time about your staying?

(Objected to as incompetent.)

Ans. She told me, before she went to the Round Hills, not to go away at any time, if Hetty did tell me, while she was away; but to come and tell her.

Int. 26. If, in this connection, she said anything about paying your board, state all she said.

(Objected to for form and substance.)

Ans. She said at one time that if Hetty treated me so that I couldn't stay there, that she should pay my board.

Int. 27. If she said anything at that time about how you should be treated, state all she said.

(Objected to for form and substance.)

Ans. She said I should be treated well while I was in her house.

Int. 29. If, in this connection, she said anything about a "pit," state it.

(Objected to as above.)

Ans. She said that Hetty should not treat me so any more; that sometimes a person dug a pit for another and got into it themselves. This was said to me sometime in 1861.

Int. 29. Did she or not say anything as to Miss Robinson complaining about others?

Ans. She said Miss Robinson often came to her with complaints about the inmates of the house, and it was very trying to her.

Int. 30. Whether, on any occasion, at breakfast time, Miss Robinson made any complaints to you about your management of the table; if so, what was said, and what happened?

(Objected to for form and substance.)

Ans. Miss Howland, Miss Montague, and Miss Robinson were taking breakfast one morning. I went up stairs to do the work, and Miss Robinson came up and said, Why didn't you put on those cold

pieces, and have them eaten up? I told her Miss Howland told me not to talk with her anything about the provisions or the cooking. I started to go down stairs, not wishing to have any unpleasant words, and she came right after me, took hold of the back part of my clothes, and pulled me down. I hollowed, and Miss Montague and Mr. Brownell came into the entry. Then I got up when I could, and went
618 down stairs. (I had a pitcher in each hand when I was pulled down.) Then Miss Howland told me to come up in her room and sit down by her. Miss Howland said she would not have such work in her house. (All statements of Miss Howland objected to by complainant's counsel.) She sent Mr. Brownell after Mr. Mandell, to come up and see what could be done. Then Miss Robinson said so much against it, that finally Miss Howland sent word to Mr. Mandell that he need not come.

Int. 31. What was done to your clothes in this assault, and what was the effect upon you?

(Objected to as incompetent.)

Ans. My dress skirt was torn from the waist, and my skirt torn from the binding. My shoulder was hurt; and I was lame a long time.

Int. 31½. State all you know that occurred between Miss Robinson and her aunt when she proposed to put an addition on to her house.

(Objected to as incompetent.)

Ans. I was not present at the conversation. The day she told Miss Robinson she was going to put on the addition in 1863, she went to the Round Hills in the afternoon.

Int. 32. What was said to you about it, if anything?

(Objected to as incompetent.)

Ans. Miss Robinson said to me that she was very much opposed to the addition. She told me that her aunt did not need the addition put on. She said she supposed she was going to put it on to accommodate her nurses and help. She thought we had persuaded her to put it on—me and some others. I sent for Mrs. Sarah Howland to come in and talk with Hetty, she seemed to be so troubled. She came. The first time I saw Miss Howland after this, she says, "You don't know how Hetty talked to me when I told her about the addition. I think I have a right to put on an addition, if I want to. The house is mine, and the money is mine. It has troubled me so, I don't know but she will wear me out."

Int. 33. Once when Mrs. Ruth Howland heard that Hetty was coming, if Miss Sylvia Ann Howland said anything about it, state what she said.

(Objected to for form and as assuming a fact not proved, and as otherwise incompetent.)

Ans. Miss Robinson wrote to Mrs. Ruth Howland that she
619 was coming to make a visit, and Ruth sent the letter to Miss Sylvia. I was up stairs, and Miss Sylvia said, "Miss Hetty talks of coming to make a visit. I cannot have her here. I am going to get Electa to write to her not to come." In a week or so she said to me, "Electa has written a letter not to have her come, but I

am afraid she has not written it strong enough. I am going to have Dr. Gordon write a letter not to have her come."

Int. 34. Whether Miss Howland said anything, and, if so, what about Miss Robinson's style of dressing?

(Objected to as incompetent and impertinent. Question waived.)

Int. 35. How often did Miss Howland refer to Miss Robinson's treatment of her?

(Objected to as incompetent.)

Ans. Quite often; I could not say how often.

Int. 36. Whether she said anything to you about her will soon after the execution of the codicil; if so, what did she say?

(Objected to for form, and as assuming a fact not proved, and as otherwise incompetent.)

Ans. She did. She told me the next morning after the codicil was witnessed, that she had got through with it—witnessing it, I think she said—and it was a great relief to her mind. One thing more she said, "I have made it good and strong." That is all she said at that time. She frequently spoke of her will but not of whom she had given anything to. At one time she said, "I have made it so strong that Edward M. Robinson cannot break it. He won't dare to put down such a man as Dr. Bigelow."

Int. 37. State, if you know, who furnished Miss Robinson clothing before 1847.

(Objected to as incompetent.)

Ans. Her mother told me she bought it; it was made up down there.

(Answer objected to as hearsay, whereupon question and answer are waived.)

Int. 38. After Mrs. Robinson came to the Eighth street house, did Miss Howland say anything about the subject of her coming, and, if so, what did she say?

(Objected to as assuming a fact not proved, and as otherwise incompetent and impertinent.)

620 Ans. She said her home was so unpleasant that she could not stay. She said nothing more at that time. She said at one time that Hetty was going to have company, and wanted her mother to give up her own front chamber and move into a back chamber, and, after a while, she, Mrs. Robinson, consented to it, but expected to go back into that room; that Hetty did not have her company, but was not willing her mother should go back into that room. Miss Howland said that Mrs. Robinson told her that Mr. Robinson thought she had better give up the room to Hetty. Miss Howland said she thought Mr. Robinson was very cruel; that Mrs. Robinson ought to have the front chamber. Before Mrs. Robinson's death Miss Hetty Robinson lived on Second street with her father.

Int. 39. Now state whether or not before Mrs. Robinson's death Miss Hetty had any room in Miss Howland's house?

Ans. Not that I know of.

Cross-examination:

(Cross-interrogatories propounded by David Thaxter, esq., of counsel for complainant.)

Cross-int. 1. What wages were you receiving when you first went to Gideon Howland's house, and what did you receive from time to time up to Miss Howland's death?

Objected to as immaterial.)

Ans. The first summer I received two dollars and a half a week. In the winter I received three dollars, and the same sum, three dollars, afterwards, both summer and winter, as long as I lived with her. She never afterwards exchanged a word with me about wages, but always paid me pleasantly. The household, while I was at Gideon Howland's, were Gideon Howland, Mrs. Ruth Howland, two servant men—one a Mr. Sherman, the other name I don't recall—Miss Hetty Robinson, and myself. I forgot to name Miss Sylvia. Afterwards, there was a colored girl worked there a while. I should think she didn't stay a great while. After Mr. Gideon Howland's death, when I said, "We all moved to Eighth street," I included in "we" Miss Howland, myself, and a man servant. While I was housekeeper, sometimes I did the chamber work, and sometimes the girl. I took my meals in the kitchen. Miss Robin-
621 son did not go to her father's to live till after she got through going to Sandwich to school. While she was at that school she spent her vacations at Gideon Howland's while we lived there. I think the furniture in the north room of Miss Howland's house was Miss Robinson's, and I expect she has taken it.

Cross-int. 2. What part of the room do you say you stood when you handed Miss Robinson the keys of the trunk, after her aunt's death?

Ans. Close by the closet door. When I first went in, Miss Robinson was near the closet door. The door was then shut. I think she opened it after I went in. I handed the keys to her before she opened it. I handed her three keys; one of them belonged to the trunk. They were all tied together, but I never knew what they were the keys to. I never knew them to be used. I stayed but a few minutes after giving her the keys, and then I went down stairs. I don't remember as I did go any nearer to the closet after I handed her the keys. Miss Montague was standing then by the closet door. I cannot tell whether she stood nearer than I did; it was about dark, and I felt very badly at having the keys taken away so soon, and I don't recollect. I think I went out of the room before Miss Robinson came out of the closet. Miss Montague was standing up there when I went out; she was not doing anything. I don't recollect as we said anything while there. It was after tea and towards dusk; but I could not say what the hour was. Our tea hour was six, but sometimes it was rather later. I don't recollect when I was first asked as to what occurred that night about these keys, nor by whom. I recollect making an affidavit about it some months ago, before Mr. Taylor, about this matter. I don't remember now how long it was before this that I first spoke about delivering these keys. While I

was living with Miss Howland I used, once a year, to go to Little Compton and visit, and stayed about two nights. The last two years I did not go. I have stayed as much as a week or ten days; but not for about ten years before Miss Howland's death did I stay so long. I once was confined to my room by sickness four or five days. That was before Dr. Spooner left practising. It was as long as ten years ago. When I was at Little Compton at one time, I gave them to Miss Montague, and at other times they were in my possession, locked up at the house. I always asked Miss Howland what I should do with them.

622 (The further cross-examination is stated by counsel for complainants to be de bene esse, and reserving all rights and not waiving any objections heretofore taken to the competency or admissibility of any part of the testimony in chief.)

Cross-int. 3. When was your attention first called to the fact that you put two papers into that trunk for Miss Hetty, and by whom?

Ans. I could not tell. It was since Miss Howland's death. I do not recollect by whom. I can't recollect whether it was before the date asked about the 1st of January last.

Cross-int. 4. Do you remember the counsel at this examination asking you anything about putting in a yellow envelope or a yellow paper into the trunk, just before you said you put in a paper, and you thought it was a yellowish envelope?

Ans. I do not recollect about it.

Cross-int. 5. What is your recollection about the size of that paper?

Ans. I could not tell. I took it and put it right into the trunk, never thinking of hearing anything of it again.

Cross-int. 6. Can you tell how long the interval was between the times of putting in these two papers of which you have testified?

Ans. I cannot give any idea; I have no recollection at all as to the time when the yellowish envelope was put in.

Cross-int. 7. Can you recollect the time of day when they were put in?

Ans. The first one was in the morning; as to the other, I am not sure. but I think it was in the forenoon. My recollection is more sidtinct about the first than about the second.

Cross-int. 8. Had Miss Howland any other trunk, in which she kept her papers, beside that?

Ans. No, sir; there were other papers there, I presume, besides bills and receipts. There was a handkerchief tied up, which I supposed contained papers. I do not know that I ever placed any other papers in there, except bills and receipts and the papers I have referred to; I don't know what Miss Howland might have placed there before she gave me the keys. She used to have bills that Mr. Mandell sent up, which were put in there. I put in papers which

623 Mr. Mandell sent up—in the trunk. I did not read them. Sometimes, when Miss Howland told me to put them in, she would call them papers and sometimes bills. I refer only to those papers that Mr. Mandell sent up.

Cross-int. 9. You have stated that, in February, before Miss Howland died, after she revived from an ill turn, she said, "I have remembered you in my will." Now, who were present at that time?

Ans. I could not say. I felt very bad—we thought she was dying. I did not look round; I stood by her leaning over the bed. I cannot tell who was present; there might have been two or three. A while before that there were a number in the room, but just at that time I cannot say. I felt so badly.

Cross-int. 10. Is that the first time you heard Miss Howland make allusion to her having made a will?

Ans. No. She told me when she first came from the Round Hills, after this will was made, that she had made one, but never told me of any gifts to any one She never exchanged a word with me as to who she had given her property to, until this time when she told me that she had remembered me. She had frequently spoken of having made her will before she made this codicil. She spoke to me about it. She said she had made her will, and made it to her satisfaction. I told her I was glad if she was satisfied about it. At one time she said it was a great relief to her that she had made her will. That was the amount whenever she spoke of it. I don't know that she used the same words every time. At her house and in her room she said thus. When she talked to me, she would generally be lying on the bed or the lounge, and tell me to take a chair and draw up to her. Sometimes Miss Montague would go out of the room when she talked to me, but, as Miss Howland always spoke low, being sick, she might not have heard when she was there. She spoke of this several times, but not always when she conversed with me. After she came home in the summer of 1863, she first spoke of having made her will.

Cross-int. 11. Considering the number of times that you say Miss Howland alluded to this will, is it not your belief that Miss Montague was present at some of those times?

(Objected to as calling for the inference of the witness and not for any fact.)

Ans. I think it very likely she was; I can't say. Miss
624 Howland often had privacy with me, and wanted me to draw up my chair by her side, as she could not talk loud. Sometimes she would talk about the cooking, and sometimes about something else. Mrs. Brown would always go out at those times. Miss Montague was in the room many times when I had conversation with her.

Cross-int. 11½. When was the time when this tough steak scene occurred, which you spoke of?

Ans. In 1861, in the summer. It was that same summer that I received the present of a thousand dollars. That was the only present in money that I received from her.

Cross-int. 12. Where were you on the stairs or with reference to the stairs, when you say Miss Robinson took hold of the back part of your dress and pulled you down?

Ans. I was going down the short stairs, and I fell on the landing. It was on a large stair which was always called the landing. I held on to the pitchers. I did not break them.

Cross-int. 13. I understand you, there was the main flight of stairs going up, then a turn, making a large step, which you call the landing, and then four or five steps to reach the entry. Now, on which of these four or five stairs were you when you say Miss Robinson took hold of your dress?

Ans. Yes; the steps were so; the landing is a yard long or more; several steps to the short flight. I could not tell how far down I had got. She came after me very quick, and I brought up on the landing.

Cross-int. 14. When was it that you say Miss Howland said she was going to get Electa to write to Miss Robinson not to come, as you have stated in answer to interrogatory number twenty-three?

Ans. It is impossible for me to tell.

Cross-int. 15. Can you tell the month or year?

Ans. No.

Cross-int. 16. How long was it after that she said she was going to have Dr. Gordon write?

Ans. A few days.

Cross-int. 17. Did she tell you, or do your know in any way, that he did write?

Ans. She told me he was rather loath to write; but she told him he must write to oblige her, and he promised her he would. That
625 is all I know. I never heard Miss Howland say anything about any other letter than this one written by Miss Montague and the one by Dr. Gordon.

Cross-int. 18. It was after the codicil that Miss Howland spoke of Mr. Robinson not being able to break the will, was it?

Ans. I think not; I think it was before that. Miss Montague might have been present when she said this. I don't know. She can tell.

Cross-int. 19. When was it that Miss Howland narrated what was said by Mrs. Robinson about her coming to her house, as you have stated in answer to question number thirty-eight?

Ans. Two different times she spoke of it; before Mrs. Robinson's death and after.

Cross-int. 20. To what instance of Mrs. Robinson coming to her house did she say she referred, or what did she refer to?

(Objected as assuming a fact not proved.)

Ans. Miss Howland said that Mrs. Robinson's home was very unpleasant, and she had come up there to stay. She was staying at Miss Howland's when she said this. She came in 1859, and died there in February, 1860. She was there a number of months. She came in the spring or fore part of summer.

Cross-int. 21. When, after the death of Miss Howland, did you first narrate the conversation you have referred to in answer to the thirty-eighth question in chief, and to whom?

Ans. I do not recollect now, I am sure. I do not recollect of stating it to any one. I do not remember to have stated it before; I think this is the first time I have stated it.

Cross-int. 22. In regard to the tough beef steak, and Miss Robin-

son's trying to get you out of the house, have you ever stated this to any one else before?

Ans. I think I have, to Mrs. Sarah Howland, some time ago. We were speaking about things, and I told it to her. I did not at that time tell her other things of which I have testified. I was at her house. She was a very intimate friend of Miss Howland. She knew how we got along. I do not now recollect of telling her anything else of which I have testified. I do not recollect of telling any one else beside Mrs. Howland anything that I have told here. I have a legacy under the will of Miss Howland.

Cross-int. 23. Do you remember that after the death of Mrs. 626 Abby Robinson, the father of Miss Robinson called at Miss Howland's to see Miss Robinson; and, if so, how frequently, so far as you know?

Ans. When he came from New York he used to call and see her. I cannot now tell how often; I don't remember.

Cross-int. 24. Did you ever know, at any of these times, of Miss Howland seeing Mr. Robinson?

Ans. Not that I know of.

Adjourned to Thursday, Sept. 6, at 9 o'clock a. m.

THURSDAY, *Sept.* 6.

Cross-examination resumed:

Cross-int. 25. Has Miss Montague been sitting by you all day yesterday when your deposition was taken?

Ans. She did sit by me, but we had no conversation. She is now sitting by. She came with me this morning.

Cross-int. 26. Since the adjournment last night, have you been with her at all?

Ans. I have. She stayed with me at my house. She has stayed with me a good deal since she has been in town.

Cross-int. 27. Have you seen Mrs. Sarah Howland or either of the respondent's counsel since the adjournment last night?

Ans. I have not.

(And now upon the deposition being read over to the witness, she desires to make the following additions or corrections:)

"I did tell Mr. Stetson the circumstances about the keys—about Miss Robinson calling for them that night. In May of this year I told him. I did not recall it yesterday."

"I also desire to say that I was sick nine or ten days instead of four or five days."

"I also now remember that Miss Howland gave me fifty dollars in money a few weeks before she died."

(And thereupon counsel for respondents put the following interrogatory:)

Int. 40. Say whether or not you stated to Mr. Stetson the other facts within your knowledge concerning this case.

(Objected to for form and substance.)

Ans. I do not think I did.

FALLY B. BROWNELL.

627 FRIDAY, *Sept.* 7.

Deposition of Charles R Tucker.

I, Charles R. Tucker, of New Bedford, in the county of Bristol and State of Massachusetts, aged fifty-seven years, merchant, on oath say: That I am the president of the Merchants Bank; that I went as a clerk to the house of Isaac Howland, jr., & Co., in 1830, and was there six years. I knew Miss Sylvia Ann Howland from about that time till her death. Miss Robinson I have known, and have met her occasionally from her childhood. Her father, Edward M. Robinson, became interested in the firm at the death of his wife's grandfather, Isaac, in the fall of 1833. Mr. Robinson was not actively engaged in the firm till the next year. His wife, Mrs. Abby Robinson, died the last of the winter or the early spring of 1860.

Int. 1. Whether after the death of Mrs. Robinson, and, if so, as nearly as you can recollect, at what time after, you had an interview with Miss Hetty H. Robinson? If so, state the circumstances of the interview, and what was said by you and her.

(Objected to as incompetent.)

Ans. I think, in the fall or winter after Mrs. Robinson's death, Sylvia Ann Howland's man, Frederick Brownell, called at my office and said that Miss Howland wanted to see me at a certain hour at her house that afternoon. I called and was asked into the house by Hetty H. Robinson. She stated that her aunt had gone to ride, and said that she herself wanted to see me, and that she had sent for me instead of her aunt. She said she herself was about to make a will, and that Mr. Eliot was in Washington, and, if I remember right, asked who, in my opinion, would be a suitable person to prepare one. I named Judge Prescott, and, I think, several other names. She then asked me to take some paper which she brought to the table, and make a memorandum of what she dictated. This is a long time ago; my mind was not placed on it with a view to future recall of it; but, to the best of my recollection, she gave her property to her aunt, in case her aunt outlived her, and, if she did not, for her property to go, as she expressed it, for similar charitable
purposes for which her aunt had provided in her will, pro-
628 vided that she herself died without leaving direct heirs, children or grandchildren. The memorandum was partially or entirely completed, when I think I referred to her father's not being mentioned in the will; and from that I gathered, I can't say it was in so many words, but I became fully impressed, that she did not wish her property to go to her father or his family. There was a bequest then made by her, or rather she then directed me to put down a legacy to her father. I think, during the conversation I spoke, rather urging the propriety of naming her father. My impression now is that the sum of ten thousand dollars was put down as legacy to him. I then carried the writing to Judge Prescott, and said to him that Miss Robinson desired it put in the proper form of a will. When it was completed I returned it to her, and made some

remarks discouraging her from making a will at so early a day. I think I was influenced in this by reflecting that she had a father who was capable of advising in such respects, and that she was not then, as I supposed, in the possession of a very large estate. (Complainant's counsel object to all statements of reasons or motives of the witness.) I think I did not make these suggestions to her. When I dissuaded her from making a will, she made no definite reply. The interview then closed.

Int. 2. Was this before or after the settlement of the question between Miss Robinson and her father about her mother's estate?

(Objected to as incompetent.)

Ans. It was after. I think within two or three months.

Int. 3. In your first interview, of which you have spoken, in words or substance, did Miss Robinson speak of the exclusion or otherwise of Mr. Robinson and the Robinson family?

(Objected to for form and substance.)

Ans. I think she did; distinctly so.

Int. 4. Did you have any knowledge of the making of any wills of Miss Howland? If so, state what knowledge you had, and whether in the year 1856 or 1857, one or both or near that time, you have any knowledge of Miss Howland making a will; and, if so, state your knowledge.

(Objected to for form and substance.)

Ans. I had knowledge of her making several wills, and one that was executed in 1856 or 1857. Circumstances, in my mind, lead me to think it was in 1857. I communicated, at her request,
629 with Mr. Eliot upon the subject. He caused it to be drawn up, I think, in 1856, and after it was delivered to Sylvia Ann Howland, by myself, she retained it about one year; then a codicil was added to it, and then executed and witnessed by Thomas D. Eliot, James B. Congdon, and Simpson Hart; and I took charge of it at her request. It remained in my possession until the summer or fall of 1862 or 1863. I am strongly inclined to think it was 1863. Thomas Mandell then called upon me, and said that he was requested to call on me for the will and bring it over to Sylvia Ann Howland at the Round Hills, where she then was; that is the last I had of it. I, of course, gave it to him. (Conversations between Mr. Tucker and Mr. Mandell objected to.) When the will was in my possession, it was kept in a private trunk of mine in the vault of the Merchants' Bank.

Int. 5. Had you or not the custody of a will of 1850 of Miss Sylvia Ann Howland?

(Objected to for form and substance.)

Ans. I had, from the evening it was executed until the one in 1857 was executed. When I received the one last made, I delivered to her the one of 1850.

Int. 6. How many wills of hers, if any, had you known before 1850?

(Objected to as incompetent.)

Ans. Two, certain; I think three.

Int. 7. State, if you are able, whether by these wills before 1850, any proportion, and, if so, what of the property was given to Miss Hetty H. Robinson, and what not.

(Objected to as to form as inquiring into the contents of written instruments, and as otherwise incompetent.)

Ans. She was to receive the income of one-half of Miss Howland's estate during the lifetime of her mother, Abby S. Robinson; and after her decease, the income of the balance. This was so in the will made about 1836 or 1837. In a will subsequently made she was to receive the income from one-third of the estate; and after the death of her mother, Abby S. Robinson, the income of one other third, making two-thirds of the estate. The income of the balance—that is, of one-third of the estate—was divided by that will among charities. (Last clause objected to as not responsive and as otherwise incompetent.) She executed a will soon after the death
630 of her father. He died in the fall of 1847. There was a slight change in that or the will of 1850. I can't say which; I am inclined [to] think in the will of 1850.

Cross-examination by David Thaxter, esq., of counsel for claimant:

I am the business partner of Edward D. Mandell, one of the trustees under this will.

(The further cross-examination is stated to be de bene esse, reserving all rights, and not waiving any objections heretofore taken to any part of the examination in chief. Witness continues:)

I have no recollection of going to Judge Prescott's about more than one will of Hetty H. Robinson's. From the time of my first interview with her to the time I took the draft back from Judge Prescott to her was about three or four days. My attention was first called to these circumstances by Judge Prescott. My attention was first directed to the recollection of these old wills some six or eight months ago.

Cross-int. 1. State the date of the second will of those named by you as preceding 1850.

Ans. It was after the middle of the summer of 1843, after the 19th day of July of that year, for I had moved to live in a house I had built on Seventh street. This is all I can get hold of. I cannot tell how long it was after that date; it might have been one or two years, and might have been very soon.

Direct examination resumed:

Int. 8. Whether or not have you any knowledge as to what has become of the three papers you have testified of, as executed as wills by Sylvia Ann Howland, prior to 1850?

(Objected to as assuming a fact not proved and as otherwise incompetent.)

Ans. The one after her father's death was destroyed by myself at her request. The one before—I think it was the one previous to that—she burned in my presence in the grate in her house in Water street. I have no further knowledge.

CHARLES R. TUCKER.

631 FRIDAY, *Sept.* 7.

Deposition of Eliza H. Brown.

I, Eliza H. Brown, of New Bedford, in the county of Bristol, commonwealth of Massachusetts, aged fifty-five years, on oath say:

That I lived with Sylvia A. Howland. I went as a night nurse, I think, the 18th of January, 1861. I was there till she died, only being absent a few weeks. I was there about three years. I am not certain about the date; I think it must be 1862. I worked for Miss Howland also in the day-time, sewed, knit, waited on, read to her, and did anything there was to do. I was paid as night nurse a dollar a night; that was our agreement.

Int. 1. State whether Miss Howland said anything to you about speaking to others of the compensation you received.

(Objected to as incompetent and impertinent.)

Ans. She wished me not to mention out any conversation that happened in the family. I recollect nothing said in particular about the pay.

Int. 2. Did she say anything to you in relation to that compensation, with reference to Miss Robinson?

(Objected to as above and also for form.)

Ans. I heard her say she thought Miss Hetty would not like it that she had another nurse if she knew of it.

Int. 3. State, if, after you went there, Miss Robinson was or not left alone with Miss Howland; and if not, what precautions, if any, were taken to prevent that occurrence?

(Objected to as above and as assuming a fact not proved.)

Ans. I never knew her to be left alone with her; I don't recollect of anything being done to prevent it; I don't think Miss Howland ever requested to be left alone with Miss Hetty.

Int. 4. State whether any directions were ever given by any one with reference to the door of Miss Howland's room being locked; and, if so, by whom given.

(Objected to as above.)

Ans. When Miss Robinson arrived from New York, the door of Miss Howland was always kept locked to prevent Miss Howland having an interview with her. Miss Montague, the day nurse, gave this direction.

632 (In reply to a question by the examiner, "Is that all?" witness says, "That is all I know about it.")

(Counsel for respondents object to the above question being put or the answer recorded, and the matter is submitted to the court by the examiner.)

Int. 5. State, if you know, whether Miss Howland expressed a wish or desire that Miss Robinson should not be left in the room with her; and, if so, what she said about it.

(Objected to as above.)

Ans. I heard Miss Howland say that she did not wish to see Hetty; nothing more at the time. I do not recollect hearing this more than once.

Int. 6. After Miss Howland said this, was or not the door of her room kept locked when Miss Robinson was there?

(Objected to as above.)

Ans. It was kept closed—not locked all the time, but kept closed.

Int. 7. State any facts within your knowledge tending to show whether Miss Howland was or not attached to you, Miss Montague, Mrs. Brownell; or how, otherwise.

(Objected to as incompetent.)

Ans. I never saw anything to the contrary, but she always appeared to like us; her keeping of us so long showed that.

Int. 8. Whether or not she expressed any regret at any of you being absent; if so, what was said?

(Objected to for form and substance.)

Ans. She was always glad to see us when we returned, and never wanted we should leave her. She would ask the news when we returned, whether we had anything new to tell her. She always showed that she was glad when we came back. She always had some one to take our place while we were gone. Mrs. Sarah Howland usually took my place. I don't recollect her particular words, but she would express herself that she was glad we had returned. If any particular thing had happened while we were gone, she would always tell us of it, and how she had been.

Int. 9. State as above in relation to the attachment, if any existed, of yourself, Miss Montague, and Mrs. Brownell to Miss Howland.

(Objected to as above.)

Ans. I can speak for myself, that I loved her. I had taken
633 care of her so long that she was very dear to me. The rest, I think, had the same attachment—Miss Montague and Mrs. Brownell; they had the same attachment, to appearance.

Int. 10. State any facts within your knowledge of any tendency to show any purpose or design on the part of yourself, Miss Montague, or Mrs. Brownell, or any other persons in attendance upon or having care of Miss Howland, to shorten her life; or that indicated the existence of any fear or suspicion of such a purpose on the part of her, Miss Howland, or otherwise.

(Objected to as above.)

Ans. Not any one that had the care of her, or any thing to do for her. Everything was done to prolong her life. I do not recollect of any such facts. I never heard Miss Howland say or show that she had any such fears. If she had ever such a fear, I never knew it or heard of it. I think she had too much confidence in her nurses and physician for that.

Int. 11. State any facts within your knowledge or observation tending to show the degree of care and attention which Dr. Gordon her attending physician, paid to her; and the confidence, or otherwise, which Miss Howland had in him.

(Objected to as above.)

Ans. I think he did his duty by her as a physician. It was his study both day and night for her comfort. He invented pillows for

her to lay on for her comfort, and a sedan chair to carry her about the house for her comfort; even a bedstead and spring lounge to raise her up and lay her down without lifting her. Every kind of food he could call to remembrance was introduced for her nourishment. I do not think anything was ever neglected on his part as to medicine, food, or for her personal comfort. Miss Howland had all confidence in him. Every little thing that transpired in the family Dr. Gordon must know it, and she must get his advice on it—I think that is confidence.

Int. 12. Did that or not continue till her death; or was there any change?

(Objected to as above.)

Ans. There was no change; this continued till her death. She often asked for him the night before her death; he was in the next room, and she would ask if he was there; sometimes she
634 would want him called. The last year of her life I should think he gave to Miss Howland one-third of his time, both day and night. Before that, not quite so much. While we were at the farm the year before—thirteen weeks—he devoted about all his time both day and night to her.

Int. 13. Whether Miss Howland ever said anything to you on the subject of Dr. Gordon's prolonging her life or shortening it; and, if so, what?

(Objected to as above.)

Ans. Once I observed to her that if she had had Dr. Gordon twenty years before, she would not have been as she was. She said no; that she should have been better; that Dr. Gordon had introduced bathing, and it had helped her. She said she thought it would have prolonged her life if she had had him before. I have heard her say that he had done everything for her comfort and that she could never think of having any other physician.

Int. 14. Whether or not upon the receipt of any news at Miss Miss Howland's house that Miss Hetty was about to visit her, you observed any, and, if any, what effect produced upon Miss Howland? State fully.

(Objected to as above.)

Ans. It made her nervous when she heard that she was coming. I can't say any more, except that it made her very nervous. It sometimes made her sick when she got so nervous.

Int. 15. After the alteration in the house was determined upon by Miss Howland, did Miss Robinson, to your knowledge, ever see Miss Howland?

(Objected to as above and as assuming a fact not proved.)

Ans. No; not that I know of. I heard Miss Howland say that she had seen her, but I was absent, and so it was not of my own knowledge. It was at the commencement of the cellar to the new part, about the first of September.

Int. 16. If Miss Howland spoke to you concerning the addition to that house, state what she said, and what you said.

(Objected to as incompetent.)

Ans. She told me one night, when I went up, that she contemplated building it, and the cellar had been marked out. She said, I have really made up my mind to build. I told her I was very glad, for I thought she needed the lodging rooms. She said that
635 she and Miss Hetty had had conversation about it; that Miss Hetty had said that she didn't need it, and was very sorry she was going to build it. That is all I recollect of that time. At another time, the next morning or the next day, she said that she must go down to the farm; that she could not have any more words with Hetty about it; that she had made up her mind about it and was determined to build. Nothing more was then said, only she wanted I should get ready and go down with her. I do not recollect of hearing anything said about whose money it was.

Int. 17. When did you finally leave Miss Howland's house?

Ans. July 5, 1865, the night after her burial.

Int. 18. State whether or not at any time Miss Howland spoke to you in relation to any provision made for you in her will; and, if so, what she said.

(Objected to as incompetent.)

Ans. A short time, say in June, before she died, I was at her bedside with her; she said, You know that I have given you so much money, and I want you to stay with me as long as I live. I said, Yes, Miss Howland, I will. This was after I went back on the 15th of April, after the few weeks' absence of which I have before spoken. There was nothing then said about provision in the will; she never named the will, and I did not know it was in. She said at other times that I knew that she had given me money and wanted me to stay with her.

Int. 19. After the funeral of Miss Howland, did you have an interview with Miss Robinson; and, if so, when and where?

(Objected to as immaterial.)

Ans. The next Sunday after. It was at Daniel P. Lewis's, on Court street. My daughter lives there.

Int. 20. State the conversation with Miss Robinson, if you had one with her, about this will.

(Objected to for form and substance.)

Ans. She said she thought she had been wronged in the making of the will; that there had not been justice done to her. She thought Miss Howland must have had help to make that will; that she never could have made it alone. She asked me if I thought she was sane. I told her I thought Miss Howland was in her right mind, and capable of dictating her will if she wanted to. I could not recollect
636 anything else about the will that day. I have never seen her till yesterday, from that day.

Int. 21. State what, if anything, she said at that interview about your having your legacy.

(Objected to for form and substance.)

Ans. She said she was sorry that aunty had not given my legacy to me clear, and that, if the will was broken, I should have it free from any trust—clear.

Int. 22. State if she said anything about your being called as a witness in the case.

(Objected to as above.)

Ans. I think not in particular. She said she was going to carry it into court. She said nothing about witnesses nor about me in that connection.

Cross-examination:

(Cross-interrogatories propounded by David Thaxter, esq., of counsel for complainant.)

When I said I saw Miss Robinson yesterday I merely meant I saw her in this room, in the presence of counsel here. I was here then as a witness.

(The following cross-examination is made de bene esse, the complainant reserving all rights, and not waiving any objections heretofore taken to any part of the direct examination.)

Cross-int. 1. Did you ever hear Miss Howland say anything about a will?

Ans. I never did. (Witness continues:) It was after my return in April that Miss Howland first spoke to me about giving me money. I had no knowledge of Miss Howland's will. I supposed the gentlemen came down there that night to make provision for a will, but I never asked any questions about it. I never heard anything said about it. I did not receive any additional compensation for what I did in the daytime. I think I first went to live there in the January before the addition was built; I mean when I went there permanently. I had been there before, occasionally. Before that, I had sometimes been there a few nights at a time, as a watcher, or to assist Miss
637 Montague, who was not very well. This was the way I went, say for about a month, and that was the first of my going there of late years. Before Miss Montague came, I went once for a fortnight.

Cross-int. 2. You have said, in answer to the third question, that you don't think Miss Howland ever requested to be left alone with Miss Hetty. Did you ever hear her object to being so left?

Ans. No.

Cross-int. 3. You have said that when Miss Robinson arrived from New York (in answer to the fourth question) "the door of Miss Howland's room was always kept locked." Do you refer to any period prior to the building of the addition or subsequent?

Ans. I never knew it locked against Miss Hetty before that.

Cross-int. 4. In answer to the fifth question you have said that Miss Howland once said she did not wish to see Hetty. Can you remember when and where that was said?

(Objected to for form.)

Ans. It was said the next day after the conversation between her and Hetty about the addition. It was said in her sick-room at New Bedford.

Cross-int. 5. Since Miss Howland's death, have either Mrs. Sarah

Howland or Miss Montague or Mrs. Brownell or Dr. Gordon or Mr. Stetson been to see you about this will or this controversy? If so, state about when, and if more than once.

(So far as concerned persons inquired of, except as regards Dr. Gordon and Mr. Stetson, objected to as immaterial.)

Ans. None of them have been to see me but Mr. Stetson. It was a month or two after her death that he called. I have had no conversation with him at any other time about the matters.

Cross-int. 6. Have you with Mr. Eliot; if so, when?

Ans. I have had two; one was three weeks ago and one last Monday.

Cross-int. 7. Are you one of the legatees under this will?

Ans. I am.

ELIZA H. BROWN.

638

639 *Deposition of Sarah M. Howland.*

I, Sarah M. Howland, of New Bedford, in the county of Bristol, wife of Peleg Howland, on affirmation say: That I have lived in said New Bedford fourteen years, and have known Miss Sylvia Ann Howland ever since I was married, which was twenty-nine years ago. I met her in company before. I was somewhat acquainted with her before residing here, having visited with her frequently when coming here from other places where I then lived. Since I lived in New Bedford I have known her well.

The first year or two after I came here I was invited to her house two or three afternoons in each week, and sometimes went with her to the Round Hills; afterwards the visits increased, so that the last year or two of her life she would sometimes send for me six afternoons in a week, and it would average four afternoons in a week. Sometimes she sent for me forenoons also. The last two weeks of her life I was with her night and day all the time, sleeping, however, in another room. I lived, since 1837, within about two blocks of her house.

My husband and Miss Howland's mother were first cousins. Mrs. Abby Robinson, sister of Sylvia Ann Howland, died at cousin Sylvia Ann's in second month, 1860. She had been living there several months previously. Before her mother's death Hetty had lived with her father, on North Second street. After her mother's death she came up to live at Sylvia Ann's. She staid there at intervals till 1863. She then went to New York in the summer of that year.

I knew Hetty from a child. I met her at cousin Sylvia Ann's, sometimes at her fathers, and occasionally at our house.

After Mrs. Robinson's death Sylvia Ann Howland's household consisted of herself, Electa Montague was nurse, Fally Brownell was housekeeper, Frederick Brownell lived there doing man's work, and then Hetty came there some little time afterwards. Those, if I remember rightly, comprised the household.

Int. 1. State more particularly in what relations Electa Montague and Fally Brownell stood to Miss Howland.

(Objected to as immaterial.)

Ans. Electa was nurse and Fally Brownell was housekeeper,
640 but Sylvia Ann regarded them as her friends and always treated them as such.

Int. 2. State, if you know, what Mrs. Brownell's duties as housekeeper were.

(Objected to as immaterial.)

Ans. She had the care of the household affairs; attended to the purchasing of provisions, etc., for the house, consulting Sylvia Ann from time to time. She was often in the room waiting upon her, taking the place of Electa when she was absent, and having a general oversight of all concerns of the house. This included charge of the keys, among others the key to that trunk where Sylvia Ann kept her money to make purchases, etc.

Int. 3. State the condition of Miss Howland's bodily health at the time of Mrs. Robinson's death and afterwards; whether she required aid, and, if so, whether she received it, and from whom and how.

(Objected to as above.)

Ans. At the time of Abby's death Sylvia Ann was feeble, and since 1837 had walked by leaning upon some one. Sometimes she would walk in that way with Electa, her nurse, and sometimes with Fally Brownell, and often, when I was in there, she would ask if I did not want to walk with her, and then I would walk with her about the house. Her health declined a little every year. Sometimes she would have fits of sickness and get better, and she observed to me several times that she did not get back where she used to be. (Conversation with Miss Howland objected to by complainant.) After the summer of 1863 she never walked a step, if I am not mistaken; she was carried by nurses lifting her a part of the time; after this, a part of the time, on a sedan chair, and, a part of the time placed in a chair on wheels and drawn from one room to another. In 1864, when she went to ride she was placed on this sedan chair, that was put into the carriage with her in it, and after return she was lifted out in it. Pardon Grey had the care of the carriage, and assisted in getting her in and out. In 1865 she did not ride out at all, but was carried around the house.

Int. 4. In this connection state what facts, if any, are within your knowledge, tending to show the regard or confidence, or otherwise, which Miss Howland had toward her attendants during the last five years of her life.

641 (Objected to as incompetent.)

Ans. She had great regard for them, and appeared to have great confidence in them. It became necessary to have a night nurse. Eliza Brown, and during the last few months of her life, Electa's health failed, and Sylvia was not willing to part with her, and procured a third nurse, and if Sylvia had had sisters and daughters I think she could have had no more done for her. (Objected to as expressing opinions and not facts by complainant's counsel.) That is

according to the best of my judgment and observation. Sylvia Ann more than once told Electa, as I heard her, that she could not have her to go; that she would get another nurse, that she might be able to take care of her, Electa's, own health. At one time she gave Electa five hundred dollars. It was in the spring of 1865 when Electa's health failed. Mrs. Brownell, I think, had lived with her twenty-two years. Frederick had lived part of the time with her and part of the time at Edward M. Robinson's—in all, twenty years. She had entire confidence in Mrs. Brownell. She treated her as one would treat a friend, and at one time she made her a present of a thousand dollars as a testimonial of her regard, and the estimation in which she held her services. As to Pardon Grey I heard her repeatedly say that no one could do so well for her in that capacity as he did. The last few years of her life, if Pardon could not go she would not ride; she was timid. He used to go over to Round Hills and stay about during the day, dining with us at the same table, and driving us back the same night. At one time when she was sick he staid there and assisted in lifting her, and doing whatever he could do for her comfort. I have often also heard her speak in high terms of Frederick, that he did well for her.

(All statements of opinion in the foregoing answer are objected to by complainant's counsel.)

Int. 5. State, as accurately as you can from recollection, who had the care of Miss Robinson from her infancy till the death of her mother.

(Objected to as incompetent.)

Ans. I do not know. I used to see her at her father's on North Second street, and when I was at cousin Sylvia Ann's she used to come up there; sometimes she took off her bonnet and shawl, and sometimes not. Her mother seemed to have the greatest care, so far as I knew.

642 Int. 6. Say whether Miss Robinson did or not have a room at her aunt's house on Eighth street at any time before the death of her mother?

(Objected to as incompetent.)

Ans. I think she did not; if she had I should have known it.

Int. 7. State what, if anything, you have known of any furniture claimed to be owned by Miss Robinson, which was at her aunt's house at the time of her mother's death.

(Objected to for form and substance.)

Ans. Before her death Abby told me that the carpet in the north front chamber where she then was was her own, and some, if not all, the furniture that was there was hers; also some furniture of her own was in the north front room under the chamber. Sylvia Ann also spoke of those things as Abby's. After Abby's death, when Hetty came there, they were called hers, Hetty's, things then.

(Objected to as hearsay.)

Int. 8. State whether or not Sylvia Ann Howland had any, and, if any, what care or charge of Miss Robinson as a mother or otherwise,

before the time her father broke up housekeeping, and all you knew about it.

(Objected to for form and as assuming a fact not proved, and otherwise incompetent.)

Ans. I remember nothing in particular, nothing striking as to her care. I thought she had not any particular care of her. Her mother, I thought, had care of her.

(Opinion of witness objected to by complainant's counsel.)

Int. 9. After Miss Robinson came to Sylvia Ann Howland's to live, and before the year 1863, state, so far as you can, what the relations and conduct of Miss Robinson were with reference to her aunt, and what Miss Howland said, if anything, of her as an inmate of the house.

(Objected to as incompetent.)

(Ans. She said at one time that she had no confidence in Hetty, she was so artful and manœuvring; and she was afraid some great judgment would come upon her for her unkind treatment of her mother and her (Sylvia.) She said to me at one time, If at any time you are in here and perceive any fuss between Hetty and me, I want
643 you should keep out of it; treat Hetty well, but do not take her part; you stand by me. I never saw a great deal between them. I was there once when there was something said in relation to a key. Sylvia Ann wanted Hetty to give up a key to Fally Brownell, and Hetty declined. She told her aunt that when she, her aunt, could walk about house herself, then she would give it up. I believe Hetty had put some of her own things into the closet. It was a key to a closet in the attic. That is all I now remember.

Int. 10. State whether Sylvia Ann was or not, within your knowledge, in any way affected, and if so, how, by Miss Robinson's treatment of her. If so, state all the facts within your recollection.

(Objected to for form, assuming a fact not proved, and as otherwise incompetent.)

Ans. She was very much agitated at times. I was present with her at the Round Hills when she was frightened about Hetty's riding the young horse; she trembled very much, and when she went to lie down there was a rigidity about her so that I had to assist Electa Montague in putting her on to the bed. Just now, I do not remember any other case.

(So much of the answer as states opinion is objected by complainant's counsel.)

Int. 11. In the fall of 1860, about the time Miss Robinson was making her own will, state if you heard Miss Robinson say anything, and, if so, what concerning her aunt.

(Objected to as to the last question.)

Ans. She spoke of her own will, and I said to her that I had heard some one say no one ought to live without a will. She assented, but added, I don't believe my aunty will ever make a will. It was in the ninth month, 1860, and on the same day in which she talked of having her will witnessed in the evening. It was at our house, in the back room. No one was there but Hetty and me.

Int. 12. Whether or not do you recollect Sylvia Ann's saying anything about Miss Robinson in connection with her giving up the carriage? If so, say what.

(Objected to as above.)

Ans. I heard Miss Howland speak of it repeatedly, and at one time she told me that Hetty said she would never leave off dinning her until she gave it up; at that time she trembled very
644 much. I heard something of this kind at various times; it commenced before her mother's death.

Int. 13. State whether or not you remember Miss Howland saying anything, and, if so, what, concerning any talk between herself and Miss Robinson, at times when Miss Robinson was about to go to New York. If so, state, to the best of your recollection, what was said.

(Objected to as above.)

Ans. She said that Hetty made her make a great many promises, and, among the rest, I think she said she dinned her not to make a will during her absence. One time when I went in, she said that Hetty had gone away very pleasantly, and had not exacted quite as many promises as usual. The words she used the first time of which I spoke, were, that she had at first thought she wouldn't promise her, but she dinned her and dinned her, and she wound up with making the promise.

Int. 14. State whether or not Sylvia Ann Howland at any time spoke of what she had done or written, or directed to be done or written, concerning Miss Robinson's coming to her house. If so, state what was said.)

(Objected to as above.)

Ans. She said Aunt Ruth had received a letter from Miss Robinson, stating that she was coming to New Bedford for a short time. She said that she could not have her, and that she got Electa to write to that effect, and was afraid that Electa had not written it strong enough, and so she had sent for Dr. Gordon and got him to write. This was in the spring of 1865, not many months before her death. When the news came of Edward M. Robinson's sickness, in the spring of 1865—I won't be certain of the date; it was the year of his death—she said, If Edward Robinson is taken away I cannot have Hetty. When the news came of his death, which was in sixth month, 1865, she said, after a little pause, "I cannot have Hetty Robinson here." After she returned from Round Hills, in 1863, she said to me, "I have decided not to have Hetty live with me at present. I am too feeble. She and I are both nervous, and I don't think it's best."

Int. 15. When the addition was about being made to Miss Howland's house, state if you had a conversation with Miss Robinson; and, if so, repeat what she said, and state her manner of speaking.

(Objected to as incompetent.)

Ans. She said her aunt did not need it; that Thomas Man-
645 dell came and told her that her aunt had decided to have it put on; that it had made her (Hetty) sick; and that she shouldn't get over it in two years. She said if her aunt died and

met her mother, and her mother asked her aunt if she had been good to her, (Hetty,) she could tell her no. She talked a great deal besides that I can't now remember. I asked, "Is it to be done with thy money, Hetty?" She replied that it wasn't the money, but the great thing put up there; that she didn't need it.

Int. 16. If anything was said by Miss Robinson about this matter troubling her head, state all she said.

(Objected to for form and substance.)

Ans. She said you think aunty is the sickest; while with her it is in the feet, with me it is in the head. The exact words were, "With aunty it is in the heels." She seemed very much distressed about it and highly displeased.

(Opinions of witness objected to by complainant's counsel.)

Adjourned to Thursday, Sept. 13, at 9 a. m.

THURSDAY, *Sept.* 13.

Examination resumed:

Int. 17. State any facts within your knowledge tending to show the confidence and regard, or otherwise, held by Sylvia Ann Howland towards her attending physician, Dr. William A. Gordon.

(Objected to as incompetent.)

Ans. She consulted him upon occasions of emergency as she would a brother. At the time of the death of his daughter, it was thought by the nurses best not to acquaint her with the fact. But Miss Howland said to me, "Something is the matter with the doctor; do you know what it is? I can see by his countenance that he is troubled." I told her that I had not seen him within a few days. At another time she said, "Something is the matter with the doctor, I see by his countenance. I think it is pecuniary difficulty. He has a very nice family, but they are very feeble." She had entire confidence in him as a physician. She sent for him at all times and at all hours during the night, if she felt a little more unwell. She often spoke of him with regard. [One thing tending to show her
646 regard is, that if there was anything under discussion calling for exercise of taste or judgment, she would most generally ask his judgment, and think as he did.]

(Complainant's counsel object to opinions of witness.

The respondents thereupon say that they waive all parts of the answer covered by the above objection, and, particularly, they withdraw the last clause in brackets.)

Cross-examination:

The witness being cross-examined by David Thaxter, esq., of counsel for complainant, says:

I am one of the legatees under this will, but I have endeavored to give a conscientious statement of affairs. The amount of my legacy is twenty thousand dollars. I am not myself related to deceased. I have been in attendance here daily since the testimony for re-

spondents has been taken. Electa Montague has been here nearly all the time.

Cross-int. 1. You have spoken of going to Miss Howland's very frequently. Who did you meet there usually?

(Objected to as immaterial.)

Ans. The fore part of the time I used to meet her sister Abby, and a nurse, when she had one. That was the usual company there. Afterwards, when she had nurses, I used to see them. The fore part of the time Eliza Brown was nurse; she was only night nurse; afterwards nurse night and day. While Hetty lived with her aunt, I used to see her. When I was there in the forenoon, Dr. Gordon used to call after she had a physician, steadily. That is all. The names of the different nurses since 1860 were Electa Montague. Eliza H. Brown, and Martha Hathaway. Martha Hathaway was there about three months before her death and down to the time of her death. That is all I remember.

Cross-int. 2. While making these calls at Miss Howland's from the beginning of 1860, what persons, if any, not members of Miss Howland's household, have you been accustomed to meet there?

Ans. Her cousins, Lydia Congdon and Hetty Hussey; and also Keziah Price occasionally.

(Counsel for complainant here gives notice that the remaining cross-examination is de bene esse, reserving all rights, and not waiving any objections heretofore taken to any part of the deposition in chief.)

647 Cross-int. 3. Do you know anything personally of the circumstances under which, or the terms on which, the services of Electa Montague or Fally Brownell were engaged by or for Miss Howland?

Ans. No.

Cross-int. 4. You have referred to presents made by Miss Howland to Miss Montague and Mrs. Brownell. Did she at any time make you any presents of money or anything else of value?

Ans. She did. At several different times she gave me presents. In 1861 she gave up a mortgage for $1,500 which was due on our house. She sent the mortgage to me from Round Hills, by Thomas Mandell. In 1864 she gave me several pieces of silver—a sugar-pot, teapot, and cream-pot, twelve table spoons, a plated caster, and two salt-spoons. She also sent with these some things for me to distribute as keepsakes to her cousins, whom she named. The things were sent to our house by Pardon Gray. She said that when her father died, she and Abby divided the silver. That was said with reference to my making some objection to having a half-dozen of the table spoons. She said one half-dozen were her mother's and the other half were her Aunt Sylvia's. I objected to taking the half-dozen that were her mother's, because, as I told her, it was Hetty's grandmother's. Then it was that she spoke of she and Abby's dividing the silver, and added, "I want you to promise me you will keep them." After these articles had been brought to our house by Pardon Gray, Miss Howland stated to me what I was to have. Electa

Montague was present when she gave me the statement about giving the things to the cousins. Both she and Mrs. Brownell were present when she stated about my things. Some considerable time before, when the duty was first imposed on silver, she said that Hetty was going to sell her mother's silver rather than pay a tax on it. I do not know that this had anything to do with the gift. Fally Brownell was not sent for, but came up, and I said to her, Won't thee tell her over again what thee said to me in the presence of Electa? and she did so. She said, I give you my sugar-pot, cream-pot, and tea-pot, one dozen large spoons, one caster, and two salt-spoons. Before Mrs. Brownell came up, Miss Howland gave me directions about the keep-sakes to the cousins. She wanted I should give to Lydia Congdon a plated strawberry-basket and a plated sugar-bowl; to Hetty Hussey, a plated fruit-basket and a silver porringer; to Sally Howland,
648 widow of John, a small cake-basket, plated; to Rhoda H. Taber, a pewter basin that she had had silver-plated, which originally belonged to her aunt Hicks, and two silver butter-knives; to Susan Howland, a plated toast-rack; to Sally Russell, a silver cream-pot and two pair of sugar-tongs; to Eliza W. Allen, a silver pepper-box. That was all. Then she sent some clothing to our house. During the time we were paying interest on the mortgage in 1860, she gave me thirty dollars one day in an envelope. When the interest was paid on the mortgage, I put that into it to make out the payment due. In 1865 she one day gave me fifty dollars. That comprises the presents. I would like to add an explanation about the clothing sent to the house. After her ill turn of 1864 it was sent, and she wished that what she did not give directions about, Lydia Congdon and I should do as we thought best with. I attended to her directions, and after her death Lydia Congdon and myself made a distribution of nearly all that was left. (Complainant's counsel object to so much of the above answer as is not responsive to the question.) The silver referred to as brought to our house by Pardon Gray was brought in the latter part of third month, 1864. The next day was monthly meeting; the day after she told me what I have stated in the presence of Electa and Fally Brownell.

Cross-int. 5. Had you any knowledge whatever that this silver was to be given to you or sent to your house before you saw it at your house?

Ans. I had not. She said she was going to send some things.

Cross-int. 6. What, if anything, was in or accompanying these things which Pardon Gray brought for you?

Ans. Those that were given to me and those that were not given to me were brought in a trunk together. There was nothing accompanying them. She gave me the directions afterwards.

Cross-int. 7. State what things there were in this trunk besides the silver which you say Miss Howland gave to you as your own, and please confine your answer strictly to an enumeration of the articles in it.

Ans. The things that I distributed and the things given to me were all that was in that trunk. (Objected to as not responsive.) There was a

toast-rack, a small cake-basket, a large fruit-basket plated, a silver porringer, a silver-plated basin, two butter-knives, a cream-pot, two pairs of sugar-tongs, and a silver pepper-box. Does that comprise what
649 I distributed? I believe that is all that was in the trunk, but there was another thing among my own presents that did not occur to me before when I answered. It was not in the trunk, however. One day, when I was in there, Sylvia Ann said, I have got something for you, and I want you should take them when you go home. Then she had Fally Brownell sent for, and had some things sorted over, and gave me a little box and a reticule to take with me when I went home. I took them, supposing she was going to give me directions as to who they were for. They contained a pair of gold spectacles, a gold thimble, a gold chain, a watch-key, some broken pieces of what appeared to be a seal and key. I carried them home; and, as she gave me no directions, I called her attention to the subject, and she said, "I gave them to you; didn't you understand me?" I told her I did not; that I thought she wanted them given to some one; that I should have thanked her if I had so understood it, and would now thank her for them. In that box, in addition, there was a string that had some pearl beads, and six or eight very small gold beads. I think that is everything. (Complainant's counsel note that they do not object to the witness's statement of additional gifts, but do object to conversations as not responsive and otherwise incompetent. Respondents, as a matter of caution, insist that the objection should be specific to defined portions of the answer, and not general.) The gift of this box, etc., was about a month after the gift of the silver.

Cross-int. 8. Describe the spectacles. Whose were they, if you know?

Ans. I supposed they were Sylvia Ann's. In the winter she asked me to try them on and see if I could see with them. I did so, and couldn't. I do not know who had worn them. They were sliding sides.

Cross-int. 9. What was the condition of Miss Howland's health at or about the time Pardon Gray brought this trunk to your house?

Ans. She had had a very ill, sinking turn, but was much better, so as to be moved, and to sit up some.

Cross-int. 10. Was this turn such as to cause apprehensions of her life?

(Objected to for form and substance.)

Ans. Yes; I was alarmed about her.

Cross-int. 11. Was this ill turn a sudden attack or not?

650 Ans. There had been considerable debility—some days better, and some days worse; and this time she was very much worse. I do not think it was a sudden attack. The spells when she was so very much worse lasted several days. After this time she was so much better as to be able to ride out.

Cross-int. 12. What silver remained in the house after the silver had been removed which Pardon Gray brought to your house?

Ans. I do not know.

Cross-int. 13. What kind of a trunk was this?

Ans. A large light-colored, hair-covered trunk. I sent it back in the course of two days.

Cross-int. 14. How long did the silver in the trunk remain in your house after it was brought to your house? Please confine yourself to answering the question as to time.

Ans. It was left discretionary with me, and I delivered the things seven or nine weeks before her death. (Objected to by complainants as not responsive.) It remained over a year, [and in that time I asked her if she did not think I had better return them to her. She said, "Not unless I tell you to. I want you should do as I have told you, at a suitable time."]

(Part of the answer in brackets objected to as not responsive, and otherwise incompetent.)

Cross-int. 15. Do you know anything of an open-work silver cake-basket of Miss Howland's?

Ans. I do not, unless the fruit-basket given to Hetty H. Hussey was silver; it was understood to be plated.

Cross-int. 16. Anything of a silver coffee-pot or water-pot of Miss Howland's?

Ans. I do not, and do not think she had any.

Cross-int. 17. Prior to the bringing of this trunk to your house, had you any notice of its contents, and that it was to be sent to you?

Ans. I had not. She only said she was going to send some things; she made no allusion to their being silver.

Cross-int. 18. Do you know whether any of this silver, and, if so, which of it, was kept in Miss Howland's chamber before it was sent to your house?

Ans. I do not. I don't know where it was kept.

651 Cross-int. 19. Do you know who originally purchased any of the furniture that was in the north chamber of Miss Howland's house, except the carpet, or when it was purchased, or who selected it and paid for it?

(Objected to as immaterial and as cross-examination upon matter not opened by the direct.)

Ans. I do not.

Cross-int. 20. When was it that you heard Miss Howland say that she had no confidence in Hetty, she was so artful? Where was it said, and who were present?

Ans. I think in the spring of 1862. We were walking in the entry chamber of Sylvia Ann's house; no one was with us. [I heard her at other times say the same things, only in detached sentences.]

(Clause in brackets objected to by complainant as not responsive and otherwise incompetent.)

Cross-int. 21. Confining yourself to the time referred to in the last question, being the statement you made in answer to the ninth direct interrogatory, state what you and she said preceding her statement that she had no confidence in Hetty, etc.

Ans. I do not remember.

Cross-int. 22. Can you recollect what you were talking about?

Ans. I do not.

Cross-int. 23. What, if any, remark or reply did you make?

Ans. I said, Let us have some reading.

Cross-int. 24. What else was said by you or she at that time?

Ans. Nothing. I went along with her to the chair, and she said, "We would."

Cross-int. 25. You have quite a distinct recollection of what occurred at that time, after she made that remark, haven't you?

Ans. I do remember that.

Cross-int. 26. After that, to whom, and when did you first give an account of what you remembered of that interview?

Ans. I don't remember now; I think not to any one before Miss Howland's death, unless to my husband. I think I told it to my husband. (This was in reply to a question, Do you remember as a matter of present memory that you did?)

Cross-int. 27. Do you recollect as a matter of present mem-
652 ory that you told this to your husband, and, if so, when, and where, and how soon?

Ans. I am not positive that I did; but I think I might. If I did, it was in our sitting-room probably. I can't tell when nor how soon after.

Cross-int. 28. If you have any recollection about it, will you state whether you told your husband all that occurred at that interview, or only what you have stated here?

Ans. I cannot tell now.

Cross-int. 29. Since the death of Miss Howland, have you stated to either, and which, of the counsel for respondents substantially what you have stated here upon direct examination, and, if so, were your answers written down?

Ans. I have stated to Mr. Stetson, and I think it was written down. It was not long after her death I stated these things, and then again last twelfth month, or the first of the new year. I believe the statements were written down both times. Mr. Stetson came alone, and I think no one was present except my husband.

Cross-int. 30. Have you any recollection of telling this statement about this interview with Miss Howland, about which you were last inquired of, before your first interview with Mr. Stetson—omitting what you think you may have said to your husband?

Ans. No; I have not.

Cross-int. 31. In answer to the ninth direct question, you speak of an interview with Miss Howland, where she wanted you to keep out of any fuss you might see between Hetty and her; state where that was, and when, and who were present. (The answer referred to is here read to the witness by the examiner.)

Ans. It was in Sylvia Ann's room. She said it several times. I can't fix any particular date. No one was present when it was said. We were alone. I remember two different times it was said. I thought it was said more than twice, but I am not certain that it was said more.

Cross-int. 32. State all that occurred at each of the two different times that you do remember this was said.

Ans. At one time that she said it, she recalled the circumstance relative to the key. I do not remember now what was said at the other time, or other times, if it was said more than twice.

653 Cross-int. 33. Have you any recollection of giving an account of either of these interviews before you saw Mr. Stetson, after Miss Howland's death?

Ans. I do not remember now.

Cross-int. 34. When and by whom were you first asked, or when and to whom did you first tell, that Miss Robinson had spoken to you of her own will?

Ans. I don't now remember who asked me; perhaps I may remember after thinking a little. I first told it to my husband and my brother. I think it was the same day that she spoke to me about it.

Cross-int. 35. Did you tell them that Miss Robinson was going to make a will, or had made a will?

Ans. I did. I think the term used was "had made" one.

Cross-int. 36. Did you tell them they would be wanted as witnesses to the will?

Ans. I did; that they were wanted.

Cross-int. 37. After that and before your interviews with Mr. Stetson, have you any recollection of ever mentioning the conversation you say you had with Miss Robinson on the day that will was executed?

Ans. I mentioned it to Lydia Congdon, perhaps at her house, perhaps at ours, I can't tell; but I am very confident I told her. I know I did. It might have been in 1862, but I cannot state positively. I do not now recollect of mentioning it to any one else.

Cross-int. 38. What did you say to Miss Congdon at that time?

Ans. I do not know. I only remember stating the circumstance—the conversation that Hetty had in regard to her will.

Cross-int. 39. State what you recollect that you said to Mrs. Congdon at that time. Give the words.

(Objected to for form.)

Ans. I cannot tell the words.

Cross-int. 40. Do you remember when you first heard Miss Howland say that Hetty had made her make a great many promises—this statement being made, as you say, near some time when Miss Robinson was going to New York?

Ans. I can't be positive, but think it may have been near 1861. We were in the north front chamber alone.

654 Cross-int. 41. What led to this statement? State what you and she were saying, if anything, before that remark.

Ans. I do not remember; but I think it may have been something relative to Hetty's going away.

Cross-int. 42. Do you remember what followed, or anything else at that interview?

Ans. I recollect nothing more than I have stated in my answer in chief.

Cross-int. 43. Do you remember anything that occurred, or that was said or done by you or Miss Howland, at any of the interviews

which you have referred to, in answer to the thirteenth direct, other than you have there stated?

Ans. I do not remember; but I think it very likely that we resorted to reading; it was very often that we did so from any conversation, and sometimes quite abruptly.

Cross-int. 44. Before your interviews with Mr. Stetson, have you any recollection of stating what you have stated in reply to the thirteenth interrogatory; and if so, to whom and when?

Ans. I have no recollection of mentioning that to any one until I did to counsel.

Cross-int. 45. Please look at the letter now handed you, (annexed, marked "H. R. C. P.,") and state if that was written by you and sent to Miss Robinson.

(Objected to as immaterial.)

Ans. That is my letter; I wrote it.

(The letter is here put into the case by the complainant. Respondents object to the letter as immaterial.)

Cross-int. 46. Will you please look at the statement in that letter, of the improvement of the health of Miss Robinson's father, and state whether the "severe illness," there alluded to, is the "sickness" you refer to in answer to the fourteenth direct interrogatory, when you say Miss Howland said, "If Edward Robinson is taken away I cannot have Hetty?"

(Objected to as immaterial.)

Ans. It was the same sickness, and it was with reference to a letter from Hetty, in which she spoke of the improvement in her father's health.

655 Cross-int. 47. Please look at the note and envelope now handed you, and state if the same was written by you and sent to Miss Robinson.

Ans. That is mine. I wrote and sent it. The pencil mark on the envelope I do not recollect. I might have written it.

(Letter is put in and marked J—R. C. P., with the envelope also. The respondents object to the letter as immaterial.)

Cross-int. 48. Please look at the note now handed you, and state if the same was written by you and sent to Miss Robinson.

Ans. Yes.

(Letter is put in the case and marked I.—R. C. P.)

Cross-int. 49. Was Mrs. Ruth Howland living at the death of Miss Sylvia Ann Howland?

Ans. She was.

Cross-int. 50. In speaking to or of Mrs. Ruth Howland, did Miss Sylvia call her grandmother?

(Objected to as immaterial.)

Ans. Always; and at one time, when she did not expect to live, she said, Give my love to grandmother.

Direct examination resumed:

(And upon examination being resumed by respondents it proceeds as follows:)

Int. 18. You have referred to the occasion of Miss Robinson hav-

ing an interview with you about witnesses for her own will; state what, if anything, she said to you about witnessess.

(Objected to for incompetency and as inquiring again about a matter opened in the direct examination.)

Ans. She said, Who shall I have for witnesses? I have been making my will. I told her I thought it was a good plan. I said I had heard some one say that no one ought to live without a will. She said, Who shall I have for witnesses? I said, We can any of us sign it. She said, But it must be men. I said, Then my husband and my brother is here; they can sign it. She said, Well, I can call Edward S. Taber; that will make three.

SARAH M. HOWLAND.

656 (After signature, the respondents put the following question:)

Int. 19. Has or not your attendance here been under summons for all the time you have been here?

Ans. It has. I was summoned before the commencement of the taking of these depositions here. I have not yet been paid, except what was paid by the officer when he summoned me.

(And the complainant then puts the following:)

Cross-int. 51. Have you ever been notified by the officer or paid by him for your attendance here since you were first summoned; and when was that?

Ans. I have not been since the first, which was about three weeks ago.

Cross-int. 52. When were you first called and affirmed?

Ans. Yesterday.

SARAH M. HOWLAND.

657 [R. C. P—53.]

Dear Cousin

The articles which I have sent you I wish distributed by you to the persons named in this note as keep-sakes from me,
Strawberry basket & sugar bowl to Lydia Congsdon.
Toast rack to Susan Howland
Small Cake basket to Sally Howland
To Cousin Rhoda Taber, the basin that belonged to Grandmother Howland's sister Aunt Hicks, which I had silver plated also butter knife with S. A. H. marked on it.
To Sally Russell the small silver cream pitcher marked S. A. H. and two pair sugar tongs, one pair marked M. H. the other marked I. H.
The large cake basket and silver porringer to Hetty Huzzey.
The silver pepper box to Eliza Allen.

1 silk dress	
1 do, riped up	
1 small black shawl	Elisa B.
1 small crape do	Widow Sisson
1 salmon colour.	

2 old silk
2 medium sized palmleaf, one for S Brownell, the other for Joan Sisson
2 black-lace veils
2 small green berage do, sent for returned to cousin
4 bags, 1 blue scarf, 1 marino cloak
1 box containing pocket handkerchiefs
1 Reticule containing spectacles & case with two pair scissors for S. M. Howland
4 short night dresses, sent for, returned.
A sack & stockings
1 box containing thimble some small beads, a chain two seals & a key } for S. M. Howland.
1 bundle pocket handkerchiefs
2 Muslin de laine dress patterns,—Virginia Gerrish
2 scarfs Virginia Gerrish
1 Green Scarf Mary Briggs
3 Quilted skirts
658 2 silk loose dresses
1 Thibet do
2 Quilted Skirts
4 white do
1 Blanket shawl sent for returned to Electa
2 Flannel skirts, sent for Electa
4 White aprons
1 Black silk apron
1 under handkerchief & collar
4 pr cuffs
3 night caps & (1 green veil, sent for
16 pr drawers
9 under garments
Whatever I have sent, and what I may hereafter send, I want at some future day, you should deliver according to my wishes, and should there be any things remaining that I do not give you directions for, or send for, keep them and do as you think best, with them.

Sylvia Ann Howland.

New Bedford 3d mo. 25th 1864.

DEC. 10, 1866.

I, Sarah M. Howland, of New Bedford, in the county of Bristol, on solemn affirmation say, (in answer to interrogatories by respondents:)

Int. 1. Please examine the deed before you, (being the same shown to witness, Benjamin S. Anthony, and marked R. C. P., 54,) and say, if you know who cut out the paper marked R. C. P., 52, from the rest of the deed?

(Objected to on the ground that in the state of the pleadings in this case the question and the subject-matter of examination is not open to the respondents, and because the question is otherwise in-

competent; and the complainant gives notice that any cross-examination will be de bene esse, and without waiving these objections.)

Ans. I did; to lend to Mr. Stetson.

Int. 2. Say why you cut it out.

(Objected to.)

Ans. I felt at the time a little delicacy about family affairs.

Int. 3. Please examine Exhibit R. C. P., 53, (being the ex-
659 hibit formerly produced by the witness, Joseph E. Paine,) and say if you know who signed it?

(Objected to as above.)

Ans. Yes; Cousin Sylvia Ann Howland signed it. I saw her.

(Wm. W. Crapo, esq., of counsel for complainant, is present, but declines to cross-examine.)

SARAH M. HOWLAND.

[Copies.]

Exhibits attached to deposition of Sarah M. Howland.

(H.—R. C. P)

New Bedford 5 mo 1–65

Dear Hetty

I have taken upon myself the duty of writing just a few lines to give an account of the state of thy aunts health as Electa's eyes are troubling her again and they said thee had not been written to in some time. Well, she is not much better, and I don't think she is any worse goes out on the balcony when the weather is good, and is expecting to go round the yard, in a day or two preparatory to going to ride.

I think she is not so fleshy as when thee was here last, has grown thin but takes an interest in the household affairs, and always seems much gratified when she hears of thy purchasing anything nice. At one time when she received one of thy letters, she spoke with great satisfaction about thy having a new cloak, also a stair carpet and some other things I have forgotten what now, but it really pleased her.—She continues to send for me about as she did when thee was here, and if I possibly can I go. I have thought of thee with a great deal of interest at the time and since thy fathers severe illness and think the improvement in his health must be a source of great gratitude to thee and him also beside to his numerous friends. I must now conclude with a wish that this may meet acceptance.

With much love I remain

'affectionatily'

'S. M. HOWLAN,

660 (I.—R. C. P)

New Bedford 6' mo 8th–65

Dear Hetty,

Electa's eyes are rather better but still troubling her, aching when she reads or writes to any extent, but comfortable when she is careful, therefore thy Aunty wished me to write thee a few lines giving some account of the state of her health, which is better than it was a few weeks ago. She sits up in bed, and is moved from the bed to the lounge where she remains a part of the day and is removed back again, is not able to sit up in a chair. She has suffered an abundance with her nerves. I write so circumstantially because being away I know thee will want to hear and I believe she thought thee was waiting to hear before thee wrote again. If I thought thee would rather I would not write nothing would induce me to. But how is thy health? I heard something two or three months ago of a friendship between thee and a certain gentleman, and that there was a probability of there being a tie nearer and dearer than that of friendship. I told cousin Sylvia Ann of it, and she seemed to listen to it with much interest, and we did not know but it might be a mere rumor, as it is often the case where there is no foundation for it, since that time I have heard it reiterated a number of times. Is it so? do tell us, we will be as private as night if thee wishes it.

I think thy Aunt would make no objection.

How is thy father? had you heard of the death of his old Doctor. I had an impression that Doctor Bartlett was once thy father's physician, he died day before yesterday, he will be very much missed and a great loss to his family, a wife and three boys that need a father's guidance, all boys do. We are now having very warm weather for New Bedford, and as I do not think of anything of interest to communicate I will conclude with much love and best wishes for thy welfare every way.

and remain affectionately S. M. HOWLAND.

Do write soon and please write if the above is so. Also please write about thy father how he is.

661 (J—R. C. P)

New Bedford 6 mo 19, 65

Dear Hetty,

Thy aunt requests me to write a few lines, but before I commence her subject I cannot refrain from expressing a few lines on my own account of my sympathy for thee in thy great bereavement, thy irreparable loss. I have thought much about thee again, and again with wishes indeed I may say I have craved that thee might have assistance to be resigned, from him who *will* be a father to the fatherless if they put their trust in him and follow his requirings. When I received thy letter most a week ago I read it to her and she appeared well satisfied with the description of thy friend and thought

I might write to that effect in a few days but the events that have since occured made postponement for a few days most proper, now she gives her entire consent and says from all she can learn, she thinks it would be a very suitable engagement. She seemed highly interested. This morning Cousin Lydia Congdon came and brought the photographs with which she is well pleased. I liked the looks of them all and was particularly pleased with the looks of his father and regretted to hear that he was not living. They are all good countenances.

Electa wishes me to write that she has put up the things to send by Abner Davis, excepting thy bible she has searched among thy things for it and finds but one small one, which has no births or marriages in it. I think it must be a great comfort to thee to have thy Aunt Annie with thee in this season of sorrow. I think as our relations become more and more scarce we appreciate them as we never have before. I grieve to state that Cousin Sylvia Ann though more comfortable than she has been, is still feeble.

Electa and Eliza Brown send their love. Eliza Brown says she has thought of thee a great deal.

I must close with love and best wishes and remain affectionately

S. M. HOWLAND

I most forgot to mention that Peleg had an introduction to thy friend and liked the looks of him, to use his own phrase about it

662 (*Envelope.*

J—R C P)

New Bedford June 19 Mass [*In pencil*] please write soon.	3 cts Postage Stamp Hetty H Robinson 19 West 26 St New York

663 WEDNESDAY, *Sept 12th*, 1855.

Deposition of Joanna Curtis.

I, Joanna Curtis, of the city, county, and State of New York, aged forty years, on oath say:

I lived with Miss Sylvia Ann Howland, at New Bedford, Mass., from the May after Mrs. Robinson died.

I had lived with Mrs. Robinson about a year before, I lived with Miss Howland three years lacking one month. I was her cook.

I used to see Miss Howland two or three times every day, sometimes in the kitchen, sometimes in the dining-room, and sometimes in her own room.

The dining-room was next to the kitchen, a little entry-way between.

My work was as cook. I did not do any chamber-work. Sometimes I used to go in her room merely to see her and talk with her, and sometimes I had to tell her something about the cooking.

After Mr. Robinson broke up housekeeping, Miss Robinson came to Miss Howland's and made it her home there. I can't remember how long she did so; I left before she did.

I could not tell whether or not Miss Robinson had a room at Miss Howland's before her father broke up housekeeping; she did not sleep there, I know.

Int. 1. State any facts within your knowledge while you were there, tending to show what management, if any, Miss Robinson had or tried to have, in household matters.

(Objected to as incompetent.)

Ans. She tried to have the management if she could. (Objected to by complainant as irresponsive and incompetent.) She wanted to get rid of the help that was in the house. I heard Miss Howland say that she would pay Mrs. Fally Brownell's board, if she left her. (Objected to by complainant as incompetent and not responsive.) One morning after breakfast, Mrs. Brownell went up stairs, and then she came down stairs, almost fainting away, and I saw her skirt torn off the binding. I heard Miss Howland say she would not have such work in her house, and she told Frederick, her man, to go after Mr. Mandell. Miss Robinson then cried, and she sent again to
664 Frederick and told him not to go for him. (Objected to as incompetent and not responsive by complainant.) I once heard Miss Howland say it was her own house, and she would do as she had a mind to. (Objected to as above by complainant.) She said it in the presence of her help—Miss Montague and Mrs. Brownell, and in presence of Miss Robinson.

Int. 2. State whether or not you heard Miss Robinson at any time speak of Pardon Gray in connection with his service in her aunt's employ; if so, state what she said, and all the circumstances, as you remember them.

(Objected to as incompetent.)

Ans. Miss Robinson said to me that she never would speak to Pardon Gray, and that she would try to make Miss Howland turn him away. She didn't say why. She said she would try to get Miss Howland to have Frederick to drive her.

Int. 3. State whether or not you heard Miss Howland say anything to Miss Robinson about wanting or not wanting her to stay with her, or about wanting or not wanting to have her there. If so, state all that was said, as nearly as you can remember it.

(Objected to as incompetent.)

Ans. I have heard Miss Howland say she did not want her. I do not remember whom it was said to, but I remember the words. (Ob-

jected to as not responsive, and otherwise incompetent, by complainant.) Miss Robinson was in the room, and said she would stay for all her. I did not hear anything else at that time.

Int. 4. Describe, as well as you can, the manner of Miss Robinson, while you were there, towards those who had care of Miss Howland as nurses or servants, and her mode of treatment of them. State any facts within your knowledge as to that matter.

(Objected to as incompetent and impertinent.)

Ans. She did not want Mrs. Brownell there, and she used to quarrel with her. I do not remember what she said, but she used to quarrel with her. Sometimes she used to be ugly to all the help, and sometimes pleasant to them.

Int. 5. State whether or not you heard Miss Robinson say anything concerning Dr. Gordon, in connection with his medical treatment of Miss Howland. If so, state what, and all you remember.

(Objected to for form and substance.)

665 Ans. Miss Robinson told me that she hated Dr. Gordon and his children. I did not hear her say anything about his treatment as a doctor. I don't remember how she came to say what I have stated above.

Int. 6. You say you heard Miss Robinson quarrel with Mrs. Brownell; state what you mean more fully, and who did the quarrelling.

(Objected to as incompetent and impertinent.)

Ans. Miss Robinson did the quarrelling. She quarrelled with Mrs. Brownell about the house affairs; she was the housekeeper, and Miss Robinson wanted to be the housekeeper herself.

Cross-examination:

(The following was cross-examination by David Thaxter, esq., counsel for complainant.)

When I left Miss Howland I first went to Cornelius Howland's to live, stayed there four weeks; then I went to Horatio Hathaway's, stayed there eight or nine months; then to Captain Edmund Gardner's, stayed there about five months; then I left there to go to New York. I went to Brooklyn that fall.

(Respondents object to the foregoing as incompetent and immaterial.)

Cross-int. 1. When was it that you first went to Brooklyn?

(Objected to as incompetent and immaterial.)

Ans. I left here two years ago this month, and waited a week or two in New York and then went to Brooklyn. I stayed there till March and then went to New York, where I have been since.

(Objected to as above by respondents.)

Cross-int. 2. At the first time you went to New York, did you call on Miss Robinson's servant girl?

(Objected to as immaterial.)

Ans. I did.

Cross-int. 3. Was that for the purpose of applying for a recommendation from Miss Robinson?

Ans. No, sir.

Cross-int. 4. Didn't you ask Miss Robinson's servant girl to try to get a recommendation for you from Miss Robinson? and did
666 not this servant girl subsequently state to you that Miss Robinson refused to give you a recommendation?

(Objected to, form for and substance and as being direct examination.)

Ans. No, sir.

Cross-int. 5. When did you come here from New York this time?

Ans. A week ago.

Cross-int. 6. At whose request, if any one's?

Ans. I came after my daughter; no one requested me to come.

Cross-int. 7. What other female servants were at Miss Howland's house while you were there, if any were?

Ans. Electa Montague, Mrs. Brownell; and Miss Brown took care of her nights. That was all beside myself.

(The cross-examination which follows is stated by counsel for complainant to be de bene esse, reserving all rights, and not waiving any objections heretofore taken to any part of the examination in chief.)

I left Miss Howland three years ago last April. Miss Robinson was in New York when I left. I can't remember how long she had been there.

Cross-int. 8. How came you to leave Miss Howland?

Ans. Because I could not get along with Miss Robinson. Miss Howland wanted me to leave, did not find any fault with me, and gave me a good recommendation.

Cross-int. 9. When did Miss Howland tell you to leave, and who were present?

Ans. Miss Howland didn't tell me, but she sent Electa Montague, who told me that Miss Howland said she would make a change. Nothing else was said. I left in less than a week after.

Cross-int. 10. Was not Miss Robinson during all that time in New York?

Ans. Yes.

Cross-int. 11. About how long before Miss Montague told you this was it that Miss Robinson had gone to New York; was it not a month or two?

Ans. I can't remember.

Cross-int. 12. When was this time when you say Mrs Brownell came down stairs almost fainting?

Ans. I can't remember what month it was. I can't tell how
667 long it was before I left. I can't remember, for I did not pay any attention at what time it was.

Cross-int. 13. When after that did you first tell this story, and to whom?

Ans. Soon after it happened. I have told it to Mary Ann Haskins. I do not just now recollect telling it to anybody before telling it to her.

Cross-int. 14. When next, and to whom?

Ans. I don't remember telling to anybody else.

Cross-int. 15. Prior to your coming here this time from New York, have you any recollection of ever telling this to any one else?

Ans. No. I told Mr. Stetson and Mr. Eliot on Monday last.

Cross-int. 16. When was it that you once heard Miss Howland say it was her own house, and she should do as she had a mind to; how long after you went there, or how long before you left?

Ans. Some time after I went there and some time before I left. I cannot remember more particularly.

Cross-int. 17. Where was it, and what were you doing at the time?

Ans. She said it in the dining-room; I went in there for something—I could not now tell what for—and heard the words. Miss Howland was sitting down by the window. I could not tell what the others present were doing. I only went in and came out again.

Cross-int. 18. What led to them you don't know, then?

Ans. No.

Cross-int. 19. You have spoken of seeing Miss Howland in the kitchen, the dining-room, and in her chamber; state how frequently, and whether, while you were there, she was able to go round the house thus.

Ans. She used to come down to her meals by leading. She would come through the kitchen frequently, walking with Miss Montague. And in her chamber I saw her several times a week; not every day. Sometimes she walked about with Miss Montague, sometimes with Mrs. Brownell.

Cross-int. 20. Ever see her walking with Miss Robinson?

Ans. I don't remember ever seeing her walking with Miss Robinson.

Cross-int. 21. How was her health when you first went there, and how was it when you left her?

Ans. She always was helpless, but some days she would feel quite ill and other days quite smart. I couldn't really say whether
668 she was better or worse when I left. If anything, I should say she was worse when I left.

Cross-int. 22. When was it that Miss Robinson said she never would speak to Pardon Gray, and where was it?

Ans. When she had been at Round Hills with Miss Howland. She came out one evening and told me so. I can't tell the exact time. She didn't go often with Miss Howland to the Round Hills; she went once or twice.

Cross-int. 23. Do you mean to say that while you were with Miss Howland, Miss Robinson only went with her aunt to the Round Hills once or twice?

(Objected to as examination on a matter not examined in chief, and as leading.)

Ans. I do not remember any more. If she went any more, I can't remember.

Cross-int. 24. You have said once or twice, assuming that you recollect, of two occasions when Miss Robinson went with her aunt to Round Hills, can you say on which of these it was that she spoke thus of Pardon Gray?

(Objected to as above.)

Ans. I don't remember which.

Cross-int. 25. Before coming from New York this time, to whom do you remember ever repeating this about Pardon Gray?

Ans. I do not recollect of repeating it to any one except to these gentlemen, Mr. Eliot and Stetson, the other day.

Cross-int. 26. When and where was it that you heard Miss Howland say that she did't want her, meaning Miss Robinson; and Miss Robinson said she should stay for all her?

Ans. I heard her say it in her room—Miss Howland's room. I can't remember the day of the week or of the month, or the time of the day; but I heard her say it.

Cross-int. 27. About how long after you went there, or about how long before you left, was this?

Ans. I couldn't remember; but it was some time before I left, and sometime after I went there. I could not tell who were present, but I heard her say so; that's all.

Cross-int. 28. What were you doing?

669 Ans. I went up to get something to do up for Miss Howland, but I can't recollect what. I am certain I went up for that purpose. I was not long there; staid a minute. Miss Robinson was sitting down. I do not know what she was doing. I do not know what either Miss Robinson or Miss Howland were doing or talking about at that time.

Cross-int. 29. Prior to you coming from New York, to whom do you recollect ever stating what you have stated here in answer to last inquiries, and when?

Ans. I stated it to Mr. Eliot and Mr. Stetson last Monday. I don't recollect of stating it before.

Cross-int. 30. When and where did you hear Miss Robinson say that she hated Dr. Gordon and his children?

Ans. In the kitchen. I don't remember when. It was some little time before I left. There was no one present but myself and her.

Cross-int. 31. Did you make any reply to her?

Ans. I said something, but have forgotten what.

Cross-int. 32. What reason, if any, did Miss Robinson give for making this remark?

Ans. I don't know. I don't recollect her giving any. I recollect the words she said.

Cross-int. 33. What else did she say besides what you have stated? Give all that she said at that time.

Ans. That' s all she said—that she hated him and his children.

Cross-int. 34. What was she doing in the kitchen at that time?

Ans. She only just came out; she was not doing anything. She went out a little while after; did not stay more than two or three minutes.

Cross-int. 35. Before leaving New York, to whom and when did you first state what you have said you heard Miss Robinson say about Dr. Gordon and his children?

Ans. I did not tell it to anybody. Since I have come here, I have talked with Mr. Eliot and Mr. Stetson and Dr. Gordon about these matters.

Direct examination resumed :

Int. 7. You have spoken of Miss Montague as one of the "servants." State whether or not she was not also the friend and companion of Miss Howland ?

670 (Objected to for form and substance.)

Ans. She was the friend and companion of Miss Howland.

Cross-examination continued, de bene esse, as above :

Cross-int. 36. What do you mean by friend and companion? Were you present when Miss Montague entered Miss Howland's service, or in any way arranged with Miss Howland or any one, as to her position in or relations to the household ?

Ans. Because she liked her ; took good care of her ; and she did not want her to leave. I mean Miss Howland liked Miss Montague. She was not related, but she was a companion to stay with her. I was not present as inquired of in the last part of the question.

her
JOANNA × CURTIS.
mark.

Attest:

R. C. PITMAN.

671 THURSDAY, *Sept.* 13, 1866.

Deposition of Amelia Lewis.

I, Amelia Lewis, of New Bedford, in the county of Bristol, State of Massachusetts, aged thirty-six years, on oath say: I am the present matron of the house of correction. Mrs. Eliza H. Brown is my mother. In the summer of 1865 her home was at No. 100 County street. I knew Miss Hetty H. Robinson. She had an interview with my mother at my house ; I was present. It was in July, 1865; it was on Sunday; she stayed an hour or an hour and a half.

Interrogatories by respondents :

Int. 1. State what Miss Robinson said, if anything, about Miss Sylvia Ann Howland's will, and your mother's interest under it.

(Objected to for form and substance.)

Ans. She said she thought her aunt had been influenced in it, and she asked mother if she thought so; she thought she had been influenced by Dr. Gordon and others. She said that my mother should not lose her legacy under the will if it was broken, and if she did, she should have three thousand dollars more. She said none of the help should lose their money if the will was broken. She did not mean any of her aunt Sylvia's help, who had taken care of her, should lose the money; she meant they should have it.

Int. 2. If she wished anything of your mother, state what she said; to the best of your recollection.

(Objected to for form and substance.)

Ans. She asked my mother if Aunt Sylvia had commenced to take drops; if she did not remember that she had begun to take them the

night the men were down there. [Mother had stated that she had not taken anything, so that her mind was not perfectly clear; and that she did not think she had been influenced.] (Clause in brackets is by complainants objected to as irresponsive and otherwise incompetent.) She stated to my mother that she should have the three thousand dollars. She stated that she simply wanted justice done her, and did not want Dr. Gordon or the city to have it; but she wanted
672 her aunt's help to have what was given them. She also said it was her money, and she wanted it, and meant to have it. She said to me that if I had two silk dresses, I should not want Mr. Eliot to come and take one away from me because I had two.

(In the course of answering the above question, and just after witness referred to the three thousand dollars that Miss Robinson said to her mother she should have, the counsel for respondents asked orally, "In this connection was it said?" to which witness replied "Yes."

And during the answer, upon the examiner re-reading the question above written, and saying to the witness, "If Miss Robinson wanted your mother to do anything or to say anything, the question calls for it," the witness replied, "She did not ask her to do anything or say anything.")

Int. 3. Whether or not this statement concerning the $3,000 was made in connection with the talk about the drops, and the questioning your mother about them?

(Objected to for form and substance.)

Ans. Yes; it was made at the same time; it was all one talk. I did not expect to be called on about it till they came for me this afternoon, so that I do not recollect the exact way the words came in in the conversation; but what I have stated is true.

Int. 4. What, if anything, did Miss Robinson say your mother should get if Sylvia Ann Howland's will was broken?

(Objected to for form and substance.)

Ans. She said she should not lose her money, and should have the three thousand dollars besides. She stated that all the help should have their money that Aunt Sylvia meant that they should have.

(Upon the foregoing deposition being read over to the witness, the counsel for respondents put the following interrogatory:)

Int. 5. What did Miss Robinson say to your mother she should have if the will was broken? Three thousand dollars besides what was given in the will, or three thousand dollars in all?

(Complainant objects upon the ground that the question is put after counsel for respondents had notified counsel for complainant that they had finished the direct examination, and the latter counsel had declined to cross-examine, and the deposition had been read over to the witness preparatory to signing it, and also for form and substance.)

673 Ans. Three thousand dollars besides what was given in the will. I thought I said so before.

(The counsel for complainant then put the following questions by

way of cross-examination, de bene esse, reserving all rights and not waiving any objection heretofore by them taken.)

Cross-int. 1. State all that Miss Robinson said.

Ans. When she came in she asked mother how she did, and asked me the same; then she commenced to talk about her aunt Sylvia and the will. She asked mother if she did not think her aunt had been influenced by Dr. Gordon in making the will. I can't word the conversation just as it was. She spoke of Miss Montague's doing as she was a mind to, and about Mrs. Brownell. I don't remember her words about Mrs. Brownell. I think soon after that she asked mother if Aunt Sylvia had commenced to take the drops at night. I said to Hetty that if I had a quarter of the money that she had, I'd not try and break so good a will, that I thought the poor people she had given it to needed it. She replied that she thought the poor people did; that she meant the help should have their money that her aunt intended they should. She said that if I had two silk dresses, that I would not want Mr. Eliot to come and take one of them away, because I had the two; said she wanted justice done, that was all she wanted: that the money was hers; that her grandfather intended she should have it, and her aunt meant that she should have it. I havn't stated the exact word, perhaps, about the grandfather, but it was the same meaning. I should have said it was her grandfather's money and her aunt intended she should have it. She said she was a poor orphan, all alone in the world, and people were trying to get this money away from her. I said no; she had more than she could spend. She replied it was not the money, it was justice she wanted done to her. She seemed very angry with Dr. Gordon, I thought. I don't think I remember any more that she said at that time. That is all I remember of the conversation. That was the only time I had a conversation with her.

Cross-int. 2. Have you seen Dr. Gordon since that time to have any talk with him about it?

Ans. I never exchanged any words with Dr. Gordon about it.

674 Cross-int. 3. To whom did you first state, or by whom were you first asked, about it?

Ans. Mr. Stetson; never before this afternoon, just before the examination, in the ante-room.

Cross-int. 4. Was Mr. Greene or anybody else with Miss Robinson at this time?

Ans. Mr. Greene; no one else.

(And upon examination being resumed by respondents to witness says, in answer to interrogatories :)

Int. 6. Did you or not observe, in having this conversation read to you by the examiner, that you omitted to say anything in relation to the offer made by Miss Robinson to your mother? Was it your intention to so omit, and, if so, why?

(Objected to for form, assuming a fact not proved, and as otherwise incompetent.)

Ans. It was not my intention to omit it. I did not think of it. I thought I had stated it.

AMELIA LEWIS.

675 THURSDAY, *Sept.* 13, 1866.

Deposition of Harriet S. Mosher.

I, Harriet S. Mosher, of New Bedford, in the county of Bristol, State of Massachusetts, aged forty-eight years, on oath depose and say: I am the wife of Obadiah Mosher. I was acquainted with Miss Sylvia Ann Howland and Miss Robinson. In the summer and early autumn of 1860 I resided at Round Hills farm, in the family of Uriel Sisson. I then knew Miss Howland and Miss Robinson. I recollect Miss Howland coming down there that season, and also Miss Robinson's coming.

Int. 1. Whether or not did Miss Robinson come down any of the times when Miss Howland did?

Ans. She did.

(Objected to for form.)

Int. 2. At how many of the times that Miss Howland came down did Miss Robinson come, to the best of your recollection?

Ans. I should think not over five.

Int. 3. If at any of these five visits Miss Robinston stayed over night, state your best recollection how many times.

(Objected to for form.)

Ans. I do not recollect that she stayed over night but one time, and then she stayed three nights—over Sunday.

Int. 4. Were you acquainted with Mr. Pardon Gray?

Ans. I used to see him there; he used to be in the room where I was, and I was some acquainted with him.

Int. 5. Did you hear Miss Robinson speak of Mr. Pardon Gray at any time? If so, state what she said.

(Objected to as incompetent.)

Ans. She objected to his driving her aunt out there. She wanted her aunt to turn him off and get somebody else. She was rather put out with him. She didn't like him.

Int. 6. If she stated to you the cause of her dislike, please state it.

(Objected to as impertinent and incompetent.)

Ans. It was something in regard to Mr. Jones, who was then waiting on her. She said there was a plenty of men her aunt could get to drive her as well as Mr. Gray. It was in regard to Mr.
676 Jones being invited out to ride with her to the Round Hills; he was going with her, but it was unpleasant, and he didn't go with her that forenoon, and Mr. Gray sent him out to Padanaram bridge to fish. She wanted him to ride with her, and he didn't, and Mr. Gray sent him out to fish; and that made her put out with them both. She said she thought Mr. Gray was to blame about it. Mr. Jones said he was not; that he wanted to go fishing while his bait was good.

Int. 7. On the occasion when Miss Robinson staid over night at Round Hills what days was she there?

Ans. Saturday, Sunday, and Monday.

way of cross-examination, de bene esse, reserving all rights and not waiving any objection heretofore by them taken.)

Cross-int. 1. State all that Miss Robinson said.

Ans. When she came in she asked mother how she did, and asked me the same; then she commenced to talk about her aunt Sylvia and the will. She asked mother if she did not think her aunt had been influenced by Dr. Gordon in making the will. I can't word the conversation just as it was. She spoke of Miss Montague's doing as she was a mind to, and about Mrs. Brownell. I don't remember her words about Mrs. Brownell. I think soon after that she asked mother if Aunt Sylvia had commenced to take the drops at night. I said to Hetty that if I had a quarter of the money that she had, I'd not try and break so good a will, that I thought the poor people she had given it to needed it. She replied that she thought the poor people did; that she meant the help should have their money that her aunt intended they should. She said that if I had two silk dresses, that I would not want Mr. Eliot to come and take one of them away, because I had the two; said she wanted justice done, that was all she wanted: that the money was hers; that her grandfather intended she should have it, and her aunt meant that she should have it. I havn't stated the exact word, perhaps, about the grandfather, but it was the same meaning. I should have said it was her grandfather's money and her aunt intended she should have it. She said she was a poor orphan, all alone in the world, and people were trying to get this money away from her. I said no; she had more than she could spend. She replied it was not the money, it was justice she wanted done to her. She seemed very angry with Dr. Gordon, I thought. I don't think I remember any more that she said at that time. That is all I remember of the conversation. That was the only time I had a conversation with her.

Cross-int. 2. Have you seen Dr. Gordon since that time to have any talk with him about it?

Ans. I never exchanged any words with Dr. Gordon about it.

674 Cross-int. 3. To whom did you first state, or by whom were you first asked, about it?

Ans. Mr. Stetson; never before this afternoon, just before the examination, in the ante-room.

Cross-int. 4. Was Mr. Greene or anybody else with Miss Robinson at this time?

Ans. Mr. Greene; no one else.

(And upon examination being resumed by respondents to witness says, in answer to interrogatories :)

Int. 6. Did you or not observe, in having this conversation read to you by the examiner, that you omitted to say anything in relation to the offer made by Miss Robinson to your mother? Was it your intention to so omit, and, if so, why?

(Objected to for form, assuming a fact not proved, and as otherwise incompetent.)

Ans. It was not my intention to omit it. I did not think of it. I thought I had stated it.

AMELIA LEWIS.

675 THURSDAY, *Sept.* 13, 1866.

Deposition of Harriet S. Mosher.

I, Harriet S. Mosher, of New Bedford, in the county of Bristol, State of Massachusetts, aged forty-eight years, on oath depose and say: I am the wife of Obadiah Mosher. I was acquainted with Miss Sylvia Ann Howland and Miss Robinson. In the summer and early autumn of 1860 I resided at Round Hills farm, in the family of Uriel Sisson. I then knew Miss Howland and Miss Robinson. I recollect Miss Howland coming down there that season, and also Miss Robinson's coming.

Int. 1. Whether or not did Miss Robinson come down any of the times when Miss Howland did?

Ans. She did.

(Objected to for form.)

Int. 2. At how many of the times that Miss Howland came down did Miss Robinson come, to the best of your recollection?

Ans. I should think not over five.

Int. 3. If at any of these five visits Miss Robinston stayed over night, state your best recollection how many times.

(Objected to for form.)

Ans. I do not recollect that she stayed over night but one time, and then she stayed three nights—over Sunday.

Int. 4. Were you acquainted with Mr. Pardon Gray?

Ans. I used to see him there; he used to be in the room where I was, and I was some acquainted with him.

Int. 5. Did you hear Miss Robinson speak of Mr. Pardon Gray at any time? If so, state what she said.

(Objected to as incompetent.)

Ans. She objected to his driving her aunt out there. She wanted her aunt to turn him off and get somebody else. She was rather put out with him. She didn't like him.

Int. 6. If she stated to you the cause of her dislike, please state it.

(Objected to as impertinent and incompetent.)

Ans. It was something in regard to Mr. Jones, who was then waiting on her. She said there was a plenty of men her aunt could get to drive her as well as Mr. Gray. It was in regard to Mr.
676 Jones being invited out to ride with her to the Round Hills; he was going with her, but it was unpleasant, and he didn't go with her that forenoon, and Mr. Gray sent him out to Padanaram bridge to fish. She wanted him to ride with her, and he didn't, and Mr. Gray sent him out to fish; and that made her put out with them both. She said she thought Mr. Gray was to blame about it. Mr. Jones said he was not; that he wanted to go fishing while his bait was good.

Int. 7. On the occasion when Miss Robinson staid over night at Round Hills what days was she there?

Ans. Saturday, Sunday, and Monday.

Int 8. As far as you know, state what time she arrived there Saturday.

Ans. About eleven o'clock was the general time. When they came in the forenoon, they got there about eleven; in the afternoon, about two.

Cross-examination:

(The counsel for complainant desire note that the crose-examination of this witness is de bene esse, reserving all their rights, and not waiving any objections heretofore taken to any part of the examination in chief.

The following cross-examination was made by David Thaxter, esq., of counsel for complainant:)

The season of 1860 was the only one I ever spent at Round Hills. I remained there then about eight months. I was there doing general housework. I was employed by Mr. Sisson; my wages were a dollar and half a week. I was the only female servant. Miss Howland had four rooms in the east end of the house. I only saw Miss Robinson that summer at the Round Hills, and at her home in New Bedford on the fourth of July of that year. I never saw her except that summer. Since I left the Round Hills I have lived in Dartmouth about two years and a half, and two years in New Bedford. I did not make any minute of the times when Miss Howland or Miss Robinson came out there. I had no one to call my attention to it at the time, but I remembered it as I have stated it.

Cross-int. 1. Was it at Round Hills that Mr. Jones said he wanted to go a-fishing while the bait was good?

677 (Before the above question was written it was put orally by the counsel for complainant, and the witness replied that she did not herself hear Mr. Jones say this, but that she heard that he said it.)

Ans. I think not.

Cross-int. 2. Did you hear him make any such statement?

Ans. I think I went rather too fast there; I did not hear him myself.

Cross-int. 3. Did you hear Miss Robinson make that remark that Mr. Jones wanted to go fishing while the bait was good?

Ans. No; it was Mr. Gray.

Cross-int. 4. When was this that you heard Miss Robinson say about Mr. Gray?

Ans. When she staid over night.

Cross-int. 5. After leaving Round Hills that year, when was your attention first called to the fact of who came there that summer?

Ans. Last Friday; by a gentleman whose name I did not learn. He is sitting here now.

Cross-int. 6. Will you please point him out to the magistrate?

(Witness here points to Dr. Gordon.)

Ans. Dr. Gordon saw me at Eldridge G. Turner's farm, about four miles from New Bedford. I am stopping there. Before that time no one had called my attention to the facts here stated.

Cross-int. 7. Do you remember seeing Miss Robinson wheeling her aunt in her chair?

Ans. I remember seeing Miss Robinson and Electa Montague.

Cross-int. 8. Have you seen Miss Robinson walking with her aunt at Round Hills?

Ans. I have.

Direct resumed:

Ans (9.) My husband was with me at Round Hills that season and worked on the farm. Mr. Sisson carried it on.

HARRIET S. MOSHER.

678

679 FRIDAY, *Sept.* 14, 1866.

Deposition of Samuel A. Sisson.

I, Samuel A. Sisson, of Westport, in the county of Bristol, Massachusetts, aged twenty-nine years, on oath say:

I am the son of Uriel Sisson, who carried on the Round Hills farm from 1853 till his death, in 1860. I was with my father there in 1860, and helped him.

I knew Sylvia Ann Howland, and am acquainted with Miss Robinson. I recollect Sylvia Ann being at the Round Hills in 1860. She was there, I should say, some four or five times; I can't remember the number. She was there several of those times two or three days at a time.

Int. 1. State, if you please, how many times, besides those, according to your best recollection, Miss Howland was there during the day, if at all—returning at night.

Ans. Some four or five times.

Int. 2. State, if you please, whether or not you recollect of Miss Hetty H. Robinson being there, during that season, when she, Miss Robinson, staid over night; and, if so, state the number of times.

Ans. I remember her staying over night, but I don't remember her staying over night but once; then she staid two or three nights. I can't tell of a certain what part of the season it was, but think it was the last part of the week.

Int. 3. Besides that time, state, as well as you recollect, how many times, if any, during that season, Miss Robinson went with her aunt to the farm, and returned on the same day.

Ans. Two or three times, as nigh as I can recollect.

Int. 4. During the season of which you have spoken, state who, if any person, was employed in the house as help at Round Hills.

Ans. Harriet Mosher; no one else.

680 Cross-examination:

(Conducted by David Thaxter, esq., of counsel for complainant.)

I am a legatee under the Round Hill will of Miss Howland. My legacy is ($5,000) five thousand dollars.

My wife has a legacy of ($2,000) two thousand dollars.

My mother has a legacy of ($3,000) three thousand dollars.

I helped in the out-door farm-work there in 1860. The farm was part tillage, part mowing, and part pasture. My principal occupation that season was out-door in the fields.

Cross-int. 1. When, after 1860, was your attention first called to the number of times Miss Robinson was at Round Hills, and how many times she staid there over nights that season?

Ans. A little over a week ago.

Cross int. 2. By whom and where?

Ans. Dr. Gordon; at his house.

Cross-int. 3. Did you go there voluntarily, or were you sent for there; and, if the latter, by whom?

Ans. He left word at my house that he would like to see me.

Cross-int. 4. Had you any occasion to make any memoranda or to pay any particular attention, in 1860, as to whether Miss Howland or Miss Robinson did or did not come to Round Hills?

Ans. Yes.

Cross-int. 5. What?

Ans. She boarded at my father's when she came out.

Cross-int. 6. What has that fact to do with your making any memoranda or taking any particular notice of the fact of her coming?

Ans. My father was feeble, and he gave the keeping of the accounts to me in his latter days.

Cross-int. 7. Was there anything peculiar in the manner of keeping the accounts in 1860, and compared with the years before and after?

Ans. No, sir; always kept alike.

Cross-int. 8. Was there any charge made for board when she rode down and back the same day?

Ans. Yes; if she was there at meal times.

681 Cross-int. 9. Does that charge show who came with Miss Howland at the times charge is made for board?

Ans. No, sir.

Cross-int. 10. And is that so where Miss Howland staid over night?

Ans. It is so.

Cross-int. 11. Would the amount of the charge show whether there were one or more persons with Miss Howland?

Ans. No, sir.

Cross-int. 12. Have you looked at that account of 1860, and, if so, how recently?

Ans. I have not got the account now. I have only a sort of memorandum that was drawn off the account I carried in to Mr. Mandell. I looked at the memorandum about a week ago. I have not seen the account since I carried it in.

Cross-int. 13. At whose request did you look at it?

Ans. Dr. Gordon's.

Cross-int. 14. What time did your father die?

Ans. Sept. 14, 1860. He died at Round Hill farm.

Cross-int. 15. Do you remember whether Miss Howland or Miss Robinson were there at the time of his death?

Ans. They were there the Friday before the Sunday on which he died.

SAMUEL A. SISSON.

682

683 FRIDAY, *Sept.* 14, 1866.

Deposition of Sarah Ann Fish.

I, Sarah Ann Fish, of New Bedford, in the county of Bristol, State of Massachusetts, aged fifty-six years, on oath say: I knew Sylvia Ann Howland. I worked for her some two years. I was frequently at her house when Mrs. Abby Robinson was sick there. I know Miss Hetty A. Robinson, but am not particularly acquainted with her.

Interrogatories by respondents:

Int. 1. If you heard Miss Robinson say anything about her mother's nurses while Mrs. Robinson was sick there, state what it was.

(Objected to for form and substance.)

Ans. I recollect two or three days after Mrs. Robinson was taken sick. I was at work there, and Miss Robinson came into the kitchen, and asked where Mrs. Brownell was, and how her mother was. I said I didn't know, and that Mrs. Brownell was in some other part of the house, and I didn't know where. When Mrs. Brownell came out, Miss Robinson asked her how her mother was. She told her about the same. Miss Robinson said, Why don't mother have Electa to come up and see to her? Said she was down to Mr. Robinson's doing nothing. Then she turned round and looked Mrs. Brownell in the face, and said, Who is with mother? Mrs. Brownell said, Mrs. Brown is there. Miss Robinson then flew into a great passion, as I thought, for a lady, and said that her mother ought to be put under guardianship; she would spend all her money, and have Electa down there doing nothing. I thought she stamped pretty hard for a lady; she stamped pretty hard. Then I did not see Miss Robinson again that day. When Miss Mowland came down that day to her dinner, I think Mrs. Abrams was with her. She was the nurse there then for Miss Howland.

Int. 2. If Miss Robinson spoke of the nurse's cost, state what she said.

(Objected to for form and substance.)

Ans. She didn't say how much it was. She said her mother would spend all the money she had unless she was put under guardianship.

684 Int. 3. State whether Miss Howland spoke of this matter; and, if so, state what she said.

(Objected to as above.)

Ans. When she came down to dinner, she said, Did you ever know such a girl? That may not be exactly the way she said. I said nothing, as it was none of my business. She said, if she kept coming there and disturbing her mother and herself, making them so nervous, she should have to forbid her coming; that she didn't know who she took after, she was so high-tempered. Those are the very words, I think, that she used.

Cross-examination:

(Counsel for complainant desire note that the following cross-examination is de bene esse, reserving all rights and waiving no objection above taken.

Examination by David Thaxter, esq., de bene.)

Ans. I think I was ironing this day. I used to go there to wash, iron, and clean house. It was a little while before Mrs. Robinson died; before her last sickness. I did not see her at all, Mrs. Robinson, at the time of the sickness from which she died. Miss Howland stood in the kitchen door when she said what I have stated. Her nurse came with her, who always led her to her meals. The nurse was Mrs. Abrams.

Cross-int. 1. Whom did you tell this story to first?

Ans. Am I obliged to tell you? I think I told it to a great many of the connections. I know I told it to Mrs. Brownell. I don't know who I told it to first.

Cross-int. 2. State all the persons to whom, and the times when, and the occasions on which, you have told it.

Ans. I should think I had told it to all in the house—I don't know. I don't know as I can call the others now to whom I have told it. I am afraid I can't think to tell correctly. I told it about the time it happened. It caused a considerable excitement. I know I talked a good deal about it, not being accustomed to see a young lady in such a pet. I don't remember when, after this, I told it. I
685 don't recollect of telling it very lately—not that I know of.

When I say I worked for Miss Howland two years, I do not mean constantly, but occasionally by the day. My general occupation then and now is washing and ironing and cleaning.

Cross-int. 3. Have you during this time and down to the present time been employed more or less by any relatives of Miss Howland's?

Ans. I have been to work to-day for Gilbert Allen. I suppose he is distant. I frequently work for Captain Daniel Wood. I believe he is a distant connection of the Howlands some way. I believe most all New Bedford is of the Howlands and Allens.

Cross-int. 4. Since Miss Howland's death, have you told this story to any one, and whom?

Ans. Very likely I have. I don't recollect just now.

Cross-int. 5. Do you mean to say that you cannot now recollect any person to whom you have told this since Miss Howland's death, before your testimony was taken here?

Ans. I told it to the lawyer there when he came up to see me—

say six weeks ago. I don't take any note of time when it don't concern me. I do not think of anybody else.

her
SARAH ANN × FISH.
mark.

Attest:
R. R. PITMAN.

686

687 FRIDAY, *Sept.* 14, 1866.

Deposition of Frederick Brownell.

I, Frederick Brownell, of New Bedford, county of Bristol, State of Massachusetts, aged forty-two years, on oath say:

I lived with Sylvia Ann Howland from 1853 till her death in 1865. I know Miss Hetty H. Robinson.

Interrogatories by respondents:

Int. 1. Have you or not ever heard Miss Robinson say anything about the disposition of Miss Howland's house; if so, what?

(Objected to as incompetent.)

Ans. The next day after Miss Howland was buried, Miss Robinson came in the dining-room where I was sweeping and said, Aunty has made a will. I said Yes. I had heard she had. Said she, What do you think of it? "Well," said I, "I like it very well, but I knew nothing about it till about seven weeks ago." Then she says, "Mrs. Brownell and Miss Montague have not got enough; they ought to have had this house during their lives." Says she, "Dr. Gordon and his family have got too much. Before this gets through with, you will see some fun." That is about all that was said at that time. She went out of the room.

Int. 2. If you remember the time just before Miss Howland went to the Round Hills, in 1863, when the addition to the house was contemplated, state what you saw and heard.

(Objected to as incompetent.)

Ans. One morning I was in the garden; I heard somebody crying, and I looked up at the window and saw Miss Robinson sitting on the lounge, seeming to be talking with some one, and I went into the kitchen and went to the entry door and heard Miss Robinson talking very loud and still crying. I couldn't hear what she was talking about.

Int. 3. Describe the character of Miss Robinson's tones that you heard.

(Objected to as incompetent.)

Ans. I don't know as I could. They were quite loud; she talked quite loud.

688 Int. 4. State whether or not this was the day Miss Howland went to Round Hills.

(Objected to for form and substance.)

Ans. This was in the forenoon; I think she went in the afternoon.

Cross-examination by David Thaxter, esq., of counsel for complainant:

I am the Mr. Brownell who has ten thousand dollars given in trust for me under this will.

(The examination which follows is stated by complainant's counsel to be de bene esse, not waiving any objections, and reserving all rights.)

I was first asked about Miss Robinson's talking and crying, as I have testified here, last fall, I think. I do not recollect of speaking to any one about it before. I then spoke to some one, I cannot recollect to whom. It was not Dr. Gordon.

Cross-int. 1. What person do you now call to mind as having told this to?

Ans. I cannot recollect.

Cross-int. 2. Do you remember ever talking to Dr. Gordon about it?

Ans. I did not.

Cross-int. 3. Who were present when you were sweeping and had the conversation about the will, as you have stated?

Ans. No one was in the dining-room but Miss Robinson and me. The door into the kitchen was partly open.

Cross-int. 4. When and to whom do you remember first stating what was said between you?

Ans. I cannot recollect either.

Cross-int. 5. Can you recollect stating it any time; and, if so, to whom?

Ans. I think there was a question once asked me about that, but I can't recollect. I didn't talk much about it then.

Direct-examination resumed:

Int. 5. If you knew anything of the occasion when Miss Brownell's dress was torn, state all you witnessed.

(Objected to as incompetent.)

689 Ans. One morning I was at breakfast, and Mrs. Brownell had left the table—I suppose to go up stairs. I did not see her go up stairs. In a few minutes I heard somebody halloo, and I got up from the table, and I saw Mrs. Brownell coming down the back stairs, her skirt partly off of her, slipped down from her waist. I said, "Mrs. Brownell, what's the matter?" Said she, "Hetty shoved me down." Then Miss Howland, who was in the dining-room, said, "What's the matter?" By that time Mrs. Brownell had got down, and said she, "Mrs. Brownell, what's the matter with you?" "Hetty," says she, "shoved me down." Said Miss Howland, "What made her do it?" Says she, something about some "johnny cakes" she found in the swill pail. Upon that Miss Howland said to me, Do you go right down and tell Mr. Mandell to come up here. I went and told him, and he said he would come in a few minutes.

(Complainant's counsel object to all statement of conversations of witness, Mrs. Brownell, and Miss Howland as incompetent.)

Int. 6. State what, if anything, Miss Robinson said before Miss Howland sent you for Mr. Mandell.

(Objected to as incompetent.)

Ans. She said, "I didn't shove you down, you fell down." Mrs. Brownell said, "You did shove me down."

Int. 7. Did Miss Howland say anything then? If so, what?

(Objected to as incompetent.)

Ans. I think Miss Howland said she couldn't have such works.

(The counsel for complainant give notice that the following cross-examination is de bene esse, and reserving all rights, and not waiving any objections heretofore taken to any part of the deposition in chief.)

Cross-int. 6. Did you immediately get up, after hearing the halloo of Mrs. Brownell, and go where you could see her?

Ans. I did not. I did very soon; it was within a minute or two.

Cross-int. 7. Did you see Mrs. Brownell before you heard Miss Howland or Miss Robinson say anything?

Ans. I did.

Cross-int. 8. What year was this in?

Ans. As near as I can recollect it was in 1862.

his
FREDERICK × BROWNELL.
mark.

690

691 FRIDAY, *Sept.* 14, 1866.

Deposition of Thomas Mandell.

I, Thomas Mandell, of New Bedford, in the county of Bristol, State of Massachusetts, aged seventy-four years, on oath say: I am the executor of the will of Sylvia Ann Howland. I have been a member of the firm of Isaac Howland, jr., & Co., since April, 1819; at that time the firm was Isaac Howland, jr, Gideon Howland, his son-in-law, and myself.

Int. 1. State about what was the capital of the firm at that time.

(Objected to as immaterial.)

Ans. At that time, and in the course of a few years, Isaac and Gideon had about ($93,000) ninety-three thousand dollars placed to their credit on the books of the firm.

Int. 2. When did Isaac Howland die?

Ans. Mr. Isaac Howland, jr., died December, 1863.

Int. 3. State what was the amount of Isaac Howland, jr.'s, property, and what disposition was made of it.

(Objected to as incompetent.)

Ans. His personal estate amounted to about ($218,000) two hundred and eighteen thousand dollars; real estate about ($30,000) thirty thousand dollars. One-half of his personal estate went to Sylvia Ann Howland, about (109,000) one hundred and nine thousand dollars. (Counsel for complainant object to the competency of the

witness to testify to any transaction with Sylvia Ann Howland, as he is a party to this suit and cannot be allowed to testify to any transactions with, or statements by, the testatrix, Miss Howland, unless by special order of the court; and the complainant will therefore object to any such testimony, and notify the counsel for respondents that they shall decline to cross-examine the witness upon any such examination.) ($80,000) eighty thousand dollars of this was placed to her credit on the books of Isaac Howland, jr., & Co., the balance of the $109,000, consisting of notes and stock, she placed in my hands to manage for her, on her own private account. The other half of his personal estate was paid to Mr. Edward Mott Robinson, the husband of the other granddaughter, Mrs. Abby S. Robinson. About ($69,000) sixty-nine thousand of it
692 was placed to his credit on the books of the company; and he and Miss Sylvia Ann Howland both became members of the firm in place of the grandfather—the firm retaining its old name. Mr. Edward M. Robinson placed the balance of the $109,000 paid to him, forty thousand dollars, in trust, in my hands; the income I paid to Mrs. Robinson, from time to time, so far as she wanted it or called for it; and the balance I invested with the principal from time to time.

(Complainant's counsel object to any statement in regard to the trust created by E. M. Robinson, as the writing is the best evidence, and as otherwise incompetent.)

Int. 4. State at what time Gideon Howland died, and the amount of his property, and what disposition was made of it.

(Objected to as incompetent.)

Ans. Gideon Howland died in the fall of 1847. In the spring of 1848, when his estate was settled, the amount of his personal estate was about ($650,000) six hundred and fifty thousand dollars. Half of the amount which stood to his credit on the books of the firm of Isaac Howland, jr., & Co., was placed to the credit of Edward Mott Robinson, and half to the credit of Sylvia Ann Howland; the remaining portion of the personal estate, consisting of notes, bonds, and stocks, was divided equally between the persons named, Edward Mott Robinson and Sylvia Ann Howland, by the executor.

(Complainant's counsel object to the statement of the contents of books, as incompetent; and also repeat the objection and notice heretofore given as to transactions with Miss Howland.)

Int. 5. During your connection with the firm of Isaac Howland, jr., & Co., and until the death of Sylvia Ann Howland, state who had the care and management of her business and property.

(Complainant's counsel object upon the grounds before given—the witness being a party to the suit; and give the same notice, that they decline to cross-examine; and object to the above question as otherwise incompetent.)

Ans. I had the entire care and management of it.

Adjourned to Thursday, Sept. 20, at 10 a. m., to 31 Washington street, Boston, by agreement of parties and the appointment of the examiner.

693 THURSDAY, *Sept.* 20.

Then met at the time and place above named; and by the agreement of parties, and the appointment of the examiner, the taking is adjourned to the United States circuit court room, where it then proceeds.

Int. 6. State the amount of property in the firm Isaac Howland jr., & Co., in the years of 1847, 1850, 1856–7, 1860.

(Objected to as immaterial. Agreed that the complainant may resume his objections to any interrogatories for substance until the close of the deposition.)

Ans. I have not the figures with me of the amount of property in the firm. I can state the amount of the property Sylvia Ann Howland had in the firm: In 1846, March 31, the personal property of hers in the firm was ($244,000) two hundred and forty-four thousand dollars; about March 31, 1850, the amount was ($617,000) six hundred and seventeen thousand dollars; on the same date, in 1854, the amount was ($878,000) eight hundred and seventy-eight thousand dollars; same date, 1857, about ($1,200,000;) 1860—I have not the figures with me; in 1863, at same date, the amount was ($1,442,000) one million four hundred and forty-two thousand dollars.

Int. 7. State whether at any time you procured from Charles R. Tucker a will of Sylvia Ann Howland; if so, state when it was.

(Complainant renews the objection heretofore made under the third interrogatory of respondent.)

Ans. I procured from him an envelope [said to contain a will] in the summer of 1862; Mr. Tucker told me it was a will of Sylvia Ann Howland.

(Clause in brackets objected to as incompetent by complainant.)

Int. 8. State what it was that you called on Charles R. Tucker for.

Ans. A will of Sylvia Ann Howland.

Int. 9. State whether or not you ever called on Charles R. Tucker at any other time for a will of Sylvia Ann Howland; if so, when.

Ans. I never did.

Int. 10. Where did you carry that will?

(Complainant renews the objection made under the third interrogatory.)

Ans. To the Round Hill farmhouse.

694 Int. 11. State whether or not Sylvia Ann Howland was at Round Hill farm at that time.

(Complainant objects as last above.)

Ans. She was.

(After the answer, counsel for respondents desire note made that the question is put de bene esse.)

Int. 12. State whether or not you recollect thetime of Miss Hetty H. Robinson's going to Taunton from New Bedford while the probate of the will of Sylvia Ann Howland was pending.

Ans. I recollect her coming to my house in the morning and saying she was going to Boston; it was a little after 6 a. m. I can only add that I was told by several that she went to Taunton.

(The respondents object to the recording of the last clause of the

answer as not responsive; but the examiner records it at the request of the counsel for complainant.)

Int. 13. State upon what day of the week this was, if you remember.

Ans. I don't remember.

Int 14. State, as well as you can, how long this was after the death of Sylvia Ann Howland.

Ans. I can only state from recollection; about six weeks; I am not certain and not positive; I cannot recollect any facts that tend to fix this time.

Int. 15. State from whom, if any person, you heard that Miss Robinson had gone to Taunton on the day of her conversation with you; and when you heard it.

Ans. I cannot tell the name of any person, but I heard of it the same day.

Int. 16. State as nearly as you can what was the amount of Miss Hetty H. Robinson's property in 1860.

Ans. In the course of 1860 she possessed the house on Second street, valued then between eight and nine thousand dollars; twenty thousand dollars in stocks, given her by her aunt. No; I am wrong about the date of the stocks; it was Jan. 4, 1862, that the present from her aunt was. I have no knowledge of any other property she possessed in 1860 but the house.

(Respondents object to so much of the answer as refers to 1862 as irresponsive.

695 Int. 17. State whether or not after the death of Sylvia Ann Howland, Miss Robinson spoke to you concerning the will of her aunt. If so, state when it was, and all that was said about it.

Ans. She did; in the afternoon after the funeral of her aunt—a few minutes after the will had been read. She objected to the legacy of Dr. Gordon's; said that the legacy to me should have been twice as much. That is the substance; I can't give the words.

Int. 18. State whether anything was said by Miss Robinson, and if so, what, concerning any contract or agreement made with her by her aunt.

Ans. She did not say anything about it, and never did to me.

Int. 19. State when you first heard of any claim concerning such contract or agreement.

Ans. On the day before the sitting of the supreme court for Bristol county, in the fall of 1865.

Cross-examination:

(The witness is cross-examined by Sidney Bartlett, esq., of counsel for complainant, as follows:)

Cross-int 1. Were you the business man of Miss Howland during the last twenty years of her life; and did she always consult you, so far as you know, about her business concerns?

(Objected to by respondents as cross-examination upon a matter not examined in chief.

Ans. I had the care of her property during that time, and con-

sulted her on any transactions of importance that I supposed would interest her. I went to her, and we consulted together.

Cross-int. 2. Did she send to you, from time to time, to consult with her?

Ans. Occasionally she did.

Cross-int. 3. Did you have occasion to go to her frequently to get her signatures to papers.

Ans. Occasionally, to papers of importance, such as deeds, bills of sale, and other property transfers.

Cross-int. 4. Were your relations to Miss Robinson's father
696 and to her kind and intimate up to the time of Miss Howland's death; and how long had you been a partner of her father's?

(Objected to by respondents as above, and for form and substance.)

Ans. My relations with Mr. Robinson were always kind and intimate so far as the business of the counting-room was concerned. With respect to Miss Robinson, I knew her, and occasionally saw her, but not often. Our relations were kind, so far as I know. Mr. Robinson was a partner with me in the firm about twenty-five years.

Cross-int. 5. Have you instructed your counsel in this case to set up as a defence that the daughter of your partner has forged, or procured to be forged, the name of her aunt to the papers annexed to the deposition of Miss Robinson, called the second page of Miss Howland's will, and of perjury in declaring that those signatures of her aunt were made in her presence, and to give notice thereof to her counsel, or has this been done without your instruction?

(Objected to for form and substance, and also as above.)

Ans. I have consulted with my counsel on the subject referred to there. The defences referred to have been set up with my knowledge and understanding.

Cross-int. 6. How large is the legacy you are to receive under the will of Miss Howland which has been proved; and if you receive the usual commissions for settling the estate, what do you estimate them at?

Ans. Two hundred thousand dollars. I have never made any estimate of the commissions.

Cross-int. 7. If you receive the commission of two and a half per cent., what will it amount to?

(Objected to as wholly immaterial.)

Ans. If I should receive the commission of two and a half per cent., it would amount to over ($50,000) fifty thousand dollars.

Cross-int. 8. Is your son one of the trustees under the will; and, if so, of how large a part of the property?

(Objected to as immaterial and as cross-examination upon a matter not opened by the examination in chief.)

Ans. He is; as it now stands, after the legacies have been paid, there would be probably ($1,000,000 or $1,200,000) eleven hundred or twelve hundred thousand dollars. I can't tell here exactly.

Cross-int. 9. Has your son also a legacy of ($50,000) fifty
697 thousand dollars under the above will?

Ans. He has.

Cross-int. 10. Did you attend the taking of the deposition of Miss Robinson, and see and inspect all the papers produced by her and annexed to her deposition?

Ans. I was there part of the time. I did not see them all; I certainly did not inspect them; I might have seen them all at a distance.

Cross-int. 11. Did you inspect any of them; and, if so, which, at that time?

Ans. I think I saw a letter which I addressed to Miss Robinson's father in the summer of 1864. I don't recollect any others; there might have been some others that I looked at.

Cross-int. 12. Is that all your answer?

Ans. I have nothing further to answer that I now can think of.

Cross-int. 13. Did you see at that time the two papers, or either of them, called the second page of Miss Howland's will; and were they not placed in your hands by your counsel? [Note.—The number next is an error, but is continued on. Sic in orig.? R. C. P.]

Ans. I have no recollection of taking them in my hand. I saw them passing about among the gentlemen—what was said to be those papers.

Cross-int. 16. Then you did not even look at the signatures to those papers, or either of them, did you?

Ans. I did not examine them; I have no recollection of examining them then.

Cross-int. 17. Did you call at the office of Mr. Bartlett after the will was filed, with your counsel, and examine one of those papers called the second page of Miss Howland's will?

Ans. I did

Cross-int. 18. From 1861, down to the time of her death, did Miss Howland write with difficulty, so much so that sometimes she substituted her mark to deeds instead of her signature?

(Objected to for form and substance, and as cross-examination upon matters not opened by the examination in chief.)

Ans. She always wrote her name distinctly whenever I have
698 seen her do it; as to the other part I have nothing to say. The whole question is answered.

Cross-int. 19. I repeat the question; did she write her signature with difficulty during that period, or any part of it?

(Objected to as above.)

Ans. I never saw her write with difficulty when I have seen her sign her name.

Cross-int. 20. Is the statement in your answer to the bill in this case, as to Miss Robinson's property in 1860, true?

Ans. Yes; as far as I know.

Cross-int. 21. Do you mean to say that you don't know?

Ans. The property that was left in trust, named here, (in the answer,) was paid over to Edward Mott Robinson, except the real estate.

Cross-int. 22. Have you examined the letter purporting to be signed by you, produced by Miss Robinson, and attached to her deposition,

marked "F. W. P., No. 9;" and was it signed by you, and are the facts stated in it true?

(Objected to as above.)

Ans. It was signed and written by me; the statements in it are what appeared to be true at the time; part of it was imagination in me.

Cross-int. 23. Take the letter and state what part of the letter is "imagination," and whether the rest of the facts stated in it are true.

(Objected to as above.)

Ans. The imagination refers to the postscript, "I will venture an opinion," etc. The rest is true, so far as I know. There is a reference to a date which I then stated according to my then recollection, which is there stated as some three years ago; on further examination of the facts I find it is two years instead of three.

Cross-int. 24. Until within a short time prior to the death of Miss Howland, did you know that she had made the will of which you were appointed executor? Did she in any way communicate to you the fact that she had made such a will at the time it was made, or consult you about it, directly or indirectly?

(Objected to as leading in form, incompetent in substance, and as cross-examination upon matter not opened in chief, and matters advisedly omitted to be examined upon by respondents, and after the interposition of an objection by the complainant in writing.

699 Interrogatory waived.)

Cross-int. 25. Did you, a short time before the death of Miss Howland, apply to counsel, stating that she would probably die soon; that she had made no will that you knew of, and asking him to aid you with his advice when the estate came to be settled?

(Objected to for form and substance, and as cross-examination upon matters not opened by respondents.)

Ans. No.

Cross-int. 26. No occurrence of this sort happened, did there?

(Objected to as above.)

Ans. No.

Cross-int. 27. Was Mrs. Gerrish in the room at the time of your conversation with Miss Robinson—after the will was read—about the legacy?

Ans. She aided me to the room where Miss Robinson was, and I think left very soon. I won't be positive how long she staid.

Cross-int. 28. Have you in your possession or control any papers, deeds, or documents signed by Miss Howland after the year 1861, handed to you by her, or procured by you from her? If so, how many such documents have you?

Ans. I think I have a power of attorney in 1861. I think no deeds were signed after that time. There were releases of mortgages, which, of course, I have not, as they were sent west, where they belonged. I do not recollect others now. I can't tell how many I have.

Cross-int. 29. Will you state whether you have not in your possession or control any papers signed by her since 1861?

Ans. I can't remember dates sufficiently to answer the question positively.

Cross-int. 30. Have you not furnished to your counsel any documents or papers signed by Sylvia Ann Howland; and, if so, what are they, and where are they?

Ans. I have. A lot of bills of sale; power of attorney to myself. I think there was a deed, but am not positive; its date I cannot tell. I do not recollect any others; I furnished them to my counsel; they are not now in my possession.

Cross-int. 31. Did you furnish them with all the papers you possess signed by Sylvia Ann Howland, or not?

700 (Objected to as last above.)

Ans. Oh, no; I have other papers signed by her.

Cross-int. 32. Who made the selection?

(Objected to as above, and as assuming a fact not proved.)

Ans. I made it myself; took those that were handiest, supposing those were sufficient for the purpose they were taken for.

Cross-int. 33. Will you produce every paper in your possession or control, signed by Sylvia Ann Howland since Jan. 1, 1860?

(Respondents' counsel here say that the witness will advise with his counsel on this point.)

Ans. I certainly should desire to advise with my counsel first.

(Counsel for respondents here state that after the papers in their possession are used for purposes of examination, and so far as they can be, conveniently, while the examination is going on, the same shall be open to the inspection of the complainant or her counsel. This statement is inserted at the request of respondents, and after the counsel for complainant has stated that the examination should be suspended until after the witness should advise with his counsel.

Whereupon the counsel for respondent advise Mr. Mandell to say that he has no objection to the production and use of such papers, and leaves the matter with his counsel.)

Cross-int. 34. I must now repeat the question, Will you now produce, or take time to produce, to the examiner the papers referred to in the last preceding interrogatory, for examination by complainant's counsel, that they may determine what farther examination of you as a witness is necessary?

(Objected to for form and substance, and as irregular, no notice having been given of a call for such papers.

Counsel for respondents interpose, and advise witness to decline to produce them, for the reasons above stated, at present.

And thereupon the counsel for the complainant declines to proceed with the further cross-examination of the witness until he can have the aid of those papers.

Counsel for respondents state that they omitted to put a question in the direct examination, which they now desire to put. Complainant's counsel agree that it shall be deemed as properly put in point of time, but not waiving their objections, on the record, to the deposition, by reason of witness's refusal to answer the last cross-interrogatory.)

701 Interrogatory by respondents:

Int. 20. Examine the paper now produced, and marked K—R. C. P., and state in whose handwriting it is; whether you received it, and whether you replied to it.

(Paper objected to as incompetent by complainant.)

Ans. It is the handwriting of Edward Mott Robinson. I received it and replied to it.

(Paper put in the case by respondents and annexed.)

Int. 21. State whether or not the letter produced by counsel for complainant, marked "F. W. P., 9," was your answer to it.

Ans. It was.

Adjourned to 9.30 a. m.

FRIDAY, *Sept.* 21.

Cross-xeamination resumed:

And now the thirty-fourth cross-interrogatory being again put to witness, he says:

Ans. All the papers that I have had in my possession of late, with Miss Sylvia Ann Howland's name attached, are in the hands of my counsel. When I say all I have had of late, I do not include the two or three releases which I have had, and which have been sent to their destination in Detroit or Chicago. I leave it with my counsel to produce the papers or not as they judge proper.

Cross-int. 35. Do you mean to state that all the papers in your possession, signed by Sylvia Ann Howland since Jan. 1, 1860, have been put by you in the hands of your counsel?

Ans. All that I can find. I searched the papers in my trunk and safe in New Bedford; and I certainly went back as far as that, if I know where they are. I certainly did my duty last evening, and I found no others.

Cross-int. 36. Will you look at your answers to the thirtieth and thirty-first cross-interrogatories, and state which you mean to abide by—those answers, or that you have just given?

702 (Objected to as assuming a fact not proved.)

Ans. I will abide by them all, with this explanation. When I answered the thirtieth and thirty-first cross-interrogatories, I thought I had two or three bills of sale in my safe at New Bedford, dated since Jan. 1, 1860, but could not find them. I therefore believe they are in the package which was handed to my counsel.

Cross-int. 37. Do you mean to say that you have given your counsel every paper in your possession, so far as you know, signed by Sylvia Ann Howland?

Ans. So far as I know, I have given them every paper in my possession, signed by Sylvia Ann Howland since Jan. 1, 1860. I do not know of any others. I have been doing business for her forty-seven years and more, and have not for many years looked over all the papers that are stowed away in my store. I mean my answer to cover the time before 1860, as well as after.

Cross-int. 38. What did you mean by your answer to the thirty-second cross-interrogatory?

(Objected to for form and substance.)

Ans. I meant that I took a package of papers, and supposed they were all that would be required, not looking for any more at that time. Having searched last evening for what I supposed I should find in another place, I could not find them.

Cross-int. 39. Were all the papers that you handed your counsel found by you in one bundle, or did you select from various bundles?

(Objected to as above.)

Ans. All the bills of sale were in one bundle. The power of attorney was not in any bundle, neither was the old deed, if there is one there, which I think there is.

Cross-int. 40. So then, without any search, and the papers not being all in one bundle, you got them all at once and handed them to your counsel, did you?

(Objected to as above)

Ans. I consider that I have answered that interrogatory in the previous answers, and have nothing more to say about it.

Cross-int. 41. I must repeat the question. Will you please to answer it?

Ans. I repeat my last answer.

703 Cross-int. 42. That is all the reason you can give, is it?

Ans. It is.

Cross.int. 43. Will you now produce to the magistrate—to enable the complainant to determine whether to proceed with the cross-examination—all the papers that you say you found bearing the signature of Miss Howland, and which you say you handed to your counsel?

(Objected to as above and as cross-examination upon a matter not examined by respondents.)

Ans. They are not in my possession now, but in the hands of my counsel; they will produce them if they judge proper.

Cross-int. 44. The counsel in whose hands you have placed them are now present, are they not? So will you confer with them and answer the last question?

(Objected to as above.)

Ans. I have conferred with my counsel, and they advise me to answer that they intend to produce and have properly verified all the papers delivered to them by me which contain the signature of Sylvia Ann Howland, and that by the next witness to be examined.

(The counsel for complainant here desire the examiner to require the witness to produce the papers, and declines to complete the cross-examination unless they are produced.

Under all the circumstances of the case, and in view of the last answer of the witness, the examiner declines to order the witness to produce the papers immediately, but suspends the examination in order that the same may be produced within a reasonable time, and, if not so produced, for the further order of the examiner.

Benjamin Irish was then called as a witness, and his deposition

being taken, the counsel for respondents put the following interrogatory:)

Int. 22. Examine the two papers now produced, marked R. C. P. 50 and R. C. P. 51, and say whether or not those papers, together with exhibits annexed to deposition of Benjamin Irish, marked R. C. P., Nos. 1 to 30, inclusive, and R. C. P., Nos. 32 to 49, inclusive, are all the papers signed by Sylvia Ann Howland which you delivered to your counsel or have in your possession, to your knowledge?

(Objected to on the ground stated under the third interrogatory.)

Ans. They are.

704 Cross-examination resumed:

Cross-int. 45. At what time, I do not ask you in what manner, did you first know of the existence of the will of Miss Howland, of which you are executor?

Ans. Seventh day of May, 1865.

Cross-int. 46. Had you any reason to know or believe of the existence of said will prior to that time?

(Respondents object to this and preceding question for form and substance, and as cross-examination upon matter and not opened in chief.)

Ans. I did not know; from certain questions asked me, I once suspected she might be intending, some time or other, to make a will.

Cross-int. 47. Asked you by whom?

(Objected to as above.)

Ans. Dr. William A. Gordon.

Cross-int. 48. At what date?

Ans. I can't say certain. I think it was in the year 1863.

Cross-int. 49. You were not consulted by Miss Howland in any way in relation to it, were you; and did not know that any such will had been executed, did you?

(Objected to as above.)

Ans. I was not consulted, and did not know.

Cross-int. 50. Is the statement in your letter marked F. W. P., No. 9, as follows: "Had I been asked to assist in any way with regard to it, situated as I have been and still am, I should have declined to advise on the subject," strictly accurate or not?

(Objected to as above.)

Ans. The quotation from my letter was the feelings and sentiments of my mind and heart at that time.

Cross-int. 51. And did you ever do any act in contravention of those feelings at any time?

(Objected to as above, and as calling for opinion of witness instead of facts.)

Ans. No.

Cross-int. 52. Your conduct, then, has at all times conformed to those sentiments, has it not?

705 (Objected to as above.)

Ans. It has.

Cross-int. 53. Who owns or conducts the New Bedford Mercury? State, if you know.

Ans. I don't know who owns it. Mr. Fessenden and Mr. Baker conduct it.

(Thereupon counsel for respondents put the following interrogatory:)

Int. 23. Do you know anybody connected with or interested in this cause as parties or counsel who has any interest in or control over that paper?

Ans. I do not.

(And now upon the deposition being read over to the witness, he desires to substitute for "forty-seven," in his answer to cross-interrogatory thirty-seven "thirty-two," (32;) the witness stating that he inadvertently referred to the time of his connection with the firm of Isaac Howland, jr., & Co., instead of his connection with Miss Howland's business.

After the deposition had been read, the respondents put the following question:)

Int. 24. In answer to direct interrogatory number six, calling for the amount of property in the firm of Isaac Howland, jr., & Co., at certain times, you have stated the amount of property of Sylvia Ann Howland in the firm; now state the amount of her property besides what was in the firm at the dates required of in that question.

Ans. I know and will state. Personal property out of the firm and in my hands invested for her in 1836, March 31, was about ($31,000) thirty-one thousand dollars.

1846, same date, about ($77,000) seventy-seven thousand dollars.

1848, same date, about (146,000) one hundred forty-six thousand dollars.

1850, same date, about ($180,000) one hundred and eighty thousand dollars.

1854, same date, about ($222,000) two hundred twenty-two thousand dollars.

706 1857, same date, about ($227,000) two hundred twenty-seven thousand dollars.

1863, same date, about ($508,000) five hundred and eight thousand dollars.

The real estate, I cannot judge of the value at the different times. It increased from 1836, when it was $20,500, till 1863, when it was about ($75,000) seventy-five thousand dollars.

T. MANDELL.

Exhibit.

(K—R. C. P.)

Hetty has heard from some person confidentially that her Aunt S A H. has made another Will. I am indifferent about it myself—strange as it may seem to you. Hetty is much troubled about it,—made sick &c—

If you could without a breach of confidence let me know if you know anything I shall be obliged. I have not hinted to her that I should or had written you or any one. One of Hetty's connections told her, (so Hetty said to me) she had better get or take all her, Aunt would give her, as no one knew what might happen.

E. M. R.

707 FRIDAY, *Sept.* 14, 1866.

Deposition of Hetty H. Hussey.

I, Hetty H. Hussey, of New Bedford, county of Bristol and commonwealth of Massachusetts, wife of George Hussey, aged seventy-one years, on affirmation say:

I was cousin to Sylvia Ann Howland; I had known her from her childhood, and I have also known Miss Robinson from childhood.

In further answer to interrogatories by respondents, the examination proceeds as follows:

Int. 1. State what facts, if any, are within your knowledge, or what conversations, if any, you had with Sylvia Ann Howland concerning Hetty H. Robinson and her relations with her.

(Objected to as incompetent.)

Ans. I have very often heard her say she was unkind to her, and that she would like to have her away from her house. Her conversations and her appearance, I have heard her say, was very objectionable to her. She gave her a great deal of trouble about the servants, trying to get the keys from the housekeeper. At another time she said she must leave the house; that her father could take care of her better than she could; that she must leave; that she could not have her. She asked me at one time if I would come if she sent for me; that she could not put up with Hetty's manner of talking to her, and that she wished to have her friends there to assist her. I told her I didn't think we could do much; that she had better send for Mr. Mandell, or some gentleman, who could be more effectual than we could be.

I asked her in what way she was so objectionable. She said her manner, her appearance, her hair, and in all ways she was very distasteful to her; that she was frightful to her at times; that she looked more like a maniac than anything else; that she didn't know but she would become insane on the subject of money; that that was her theme from day to day. At one time when Sylvia was down at the Round Hills I called to see her; I asked her if Hetty had been to see her; she said she had not; that she had sent her home, and told her not to come there again till she sent for her. I made no remark whatever, and nothing more was said at that time; I can't tell
708 exactly when this was. I do not know or remember anything more just at this time. I know she did not wish to see her after she went away. She was asked the question, and she said she did not; she could forgive her, but she never wished to see her. She

said she was willing to pay her board or travelling expenses anywhere, but she could not have her with her; and that she, Sylvia, wished her friends to protect her; that Hetty should not be in the house.

Int. 2. If, at any time, any reference was made by Sylvia Ann Howland to Hetty's treatment of her mother and herself, state what she said, and all of it.

(Objected to for form and substance.)

Ans. I heard her say that she had every reason to suppose that Hetty had shortened the days of her mother; that she was the cause of her leaving her own house, and going to hers, Sylvia Ann's house, where she spent the rest of her days. Sylvia Ann said her sister Abby was very uncomfortable, and that she was living in splendid misery.

Int. 3. If Sylvia Ann Howland spoke at any time about anything happening to Hetty, state all that she said.

(Objected to as above.)

Ans. She at one time, when I was trying to persuade her to think more favorably of Hetty, and asked her if she thought if I should talk with her as I would with one of my own children if it would be of any use, she says, "You don't know Hetty as I do, and I wouldn't advise you to speak to her on that subject at all," and related some little circumstances why she thought she was not truthful, which I was very much surprised to hear; that she did not know what she would be tempted to do if she went on in the way she was going; she feared she might be tempted to do some dreadful thing; and added, that the time may come when you can do her a kindness. She was beside herself on the matter of money, she said. I don't think of anything more now.

Int. 5. State when Mrs. Robinson died.

(Objected to as immaterial.)

Ans. I don't remember the year. I know she died very suddenly. I was not present when she died; I saw her a few days before.

Int. 6. When did these conversations with Sylvia Ann Howland occur, which you have stated, with reference to the time of Mrs. Robinson's death?

(Objected to for form and substance.)

Ans. Some of the conversations with Sylvia with reference to her sister Abby occurred very soon after death. The conversations about Hetty, perhaps, occurred a year or eighteen months before her, Sylvia Ann's, death, as near as I can fix it.

Int. 7. Do you remember the time when the addition was made to Sylvia Ann's house; and, with reference to that, can you state more definitely the time of these conversations?

(Objected to for form and substance.)

Ans. The conversations I allude to, I think, were before the addition was put on.

Int. 8. State if you are one of the legatees under Sylvia Ann Howland's will.

Ans. Yes; twenty thousand dollars is the legacy.

Int. 9. Whether did you, at any time, receive any gift or token of remembrance from Sylvia Ann? if so, state when and what. I refer only to those in her latter days.

(Objected to for form.)

Ans. Not long before her death she sent me a porringer and a plated cake-basket and a pocket handkerchief, which last came through Lydia Congdon, with her affectionate love, and wished me to keep them in remembrance of her.

(Answer objected to by complainant's counsel as hearsay or in writing, and incompetent in either case.)

Int. 10. State whether or not Sylvia Ann said anything to you of Hetty's statements to her of the feeling of her, Sylvia Ann's, cousins, to her, Sylvia Ann; and, if so, state all that was said.

(Objected to for form and substance.)

Ans. At one time she said that Hetty was trying to convince her that her cousins took no interest in her, and did not care anything about her. I told her it was not so, and Sylvia Ann was made very happy by it; seemed very much pleased, and says, "Then you will come and assist me if Hetty undertakes to come before me as she has done."

Int. 11. State any facts within your knowledge, tending to show the regard or affection, or want thereof, that Sylvia Ann Howland had for her nurses and attendants during the last year of her life.

(Objected to for form and substance.)

710 Ans. She always spoke of them with greatest kindness and gratitude, that they had done so much for her, and she hoped they would be able to hold out as long as she did. I very often heard her speak of Monte, and Mrs. Brownell, the housekeeper. She often said of Mrs. Brownell that no one could take her place, that her duties were arduous, and she feared she might give out.

Int. 12. Now state in this connection what, if anything, Sylvia Ann Howland said concerning Hetty's feelings towards Mrs. Brownell, and what, if anything, she said Miss Robinson said she feared.

(Objected to for form and substance.)

Ans. She said that Hetty was constantly trying to get Mrs. Brownell away, and thought she had too many nurses, and it was attended with too great expense, so Hetty said; and, as an excuse to get Mrs. Brownell away, she said that Hetty had said she was afraid that Mrs. Brownell might poison her, Hetty. I said I thought it could not be that Mrs. Brownell should think of such a thing. I had a great respect for her. Sylvia Ann said it was a fact that Hetty had accused her of it, and that it made Mrs. Brownell very unhappy, so that she said she could not stay with her. Sylvia said that she told Hetty if Mrs. Brownell did go away, she should pay her board, and pay a good board as long as she lived; and that after that Hetty said nothing about it.

Int. 13. If you have knowledge of any charities or gifts to the poor made by Sylvia Ann Howland, state what, if anything, you heard her say of Miss Robinson in connection with them.

(Objected to for form and substance.)

Ans. She said she would rather Hetty wouldn't know it. She thought she would make her trouble, and make her very unhappy. Spending money in any way always made trouble, however small the sum; this last I don't mean to say was said by Miss Howland—I mean what I said about "however small the sum." I don't think she expressed it at that time in that way.

Int. 14. Did you or not have occasion to call on Sylvia Ann Howland for money for charities? If so, state what she did or said, if anything.

(Objected to for form and substance.)

Ans. I only called on her in relation to carpet shoes for the soldiers in the hospital. She gave me a small sum for the making of them, with the request that Hetty should not know it. I do not
711 recollect anything more. I was only interested in that department myself. I occasionally called for other charities. She always gave me what I asked for, and told me to call whenever I had occasion to.

Cross-examination:

(Counsel for complainant desire note that the cross-examination is de bene esse, reserving all rights and waiving no objections.

Interrogatories by David Thaxter, esq., of counsel for complainant.)

Cross-int. 1. Before answering the last question, did the counsel commence a question by asking you if you recollect any gifts of money or other things in connection with the soldiers, and then ask to have the question withdrawn or stricken out?

(Objected to as irregular and incompetent.)

Ans. I do not think I understand the question entirely. I am sure I do not recollect. I thought I had answered my question, and did not pay particular attention to what you were talking about.

Cross-int. 2. Before answering the last direct question, did you not hear the counsel who put that question say anything about your recollecting any gifts of money or other things in connection with the soldiers?

(Objected to as irregular and immaterial.)

Ans. I heard Mr. Eliot speaking; but I did not know what he was saying, or that it had anything to do with my answering.

Cross-int. 3. Did you confine your answer to the fourteenth direct interrogatory to gifts in relation to carpet-shoes for the soldiers, until your attention was called to the fact that the question was not limited to charities for soldiers?

(Objected to as above.)

Ans. I did not answer as to any other charities than the shoes to the soldiers. I see a difference now, but did not when I was answering. [I was out of health at the time, and did not see her often.] I think the amount she gave me for the shoes was $25 in all, at different times.

(Clause in brackets objected to as not responsive.)

Cross-int. 4. In direct interrogatory number one, you were asked

to "state what facts, if any, are within your knowledge, or
712 what conversations, if any, you had with Sylvia Ann Howland, concerning Hetty H. Robinson and her relations with her." Please state what period you understood by the question you were inquired about, and what period of time you intended to and did cover by your answer thereto.

Ans. There were so many different conversations with her that I could not tell. My conversations with her were short and not very frequent. I did not see her long at a time for many years. I could hardly tell when they commenced. I could better tell when they ended. I think I might go back and say three or four years before her death. It is impossible for me to recollect dates.

Cross-int. 5. Did you state all that you recollect hearing Miss Howland say concerning Miss Robinson since the death of her mother, Mrs. Abby Robinson; and, if not, why did you not? What is there in the question that should limit you to a shorter period than that?

Ans. All I recollected at the time.

Cross-int. 6. What and when was the occasion at Round Hill when you say you "asked her" (Miss Howland) "if Hetty had been to see her," and she said she had, and that she had sent her home and told her not to come there again till she sent for her?

Ans. I went down to see her. She asked me before going to come down and see her while she was there, and I went. As near as I can recollect, I think it must have been the last time but one she went down there to stay any length of time. It was within two years of her death, certainly, I should think.

Cross-int. 7. May it have been within one year of her death?

Ans. My impression is that it was rather more than a year.

Cross-int. 8. What nurses were in attendance on her at this time?

Ans. I saw "Monte," and I believe Eliza Brown, but I won't be sure.

Cross-int. 9. In what part of the house was this said, and who were present?

Ans. In the front chamber. "Monte," I think, was present.

Cross-int. 10. When was it, as you have said, that Miss Howland said that she could forgive Miss Robinson but never wished to see her; and where was it said?

Ans. Three or four months before her death, at her own house?

Cross-int. 11. Who were present?

713 Ans. I don't remember, I am sure; I don't remember whether anybody was present or not?

Cross-int. 12. When was it that Miss Howland said she was "willing to pay Miss Robinson's board or travelling expenses anywhere, but she could not have her with her, and that she (Sylvia) wished her friends to protect her?"

Ans. It was before she left the house; it was when she was thinking of going to Providence; perhaps she can remember better than I can when it was. It was said in Miss Howland's own chamber.

Cross-int. 13. Who were present?

Ans. I don't remember; most likely some of the nurses. I seldom

saw her alone, but I would not be willing to say whether they were or not.

Cross-int. 14. Were the nurses usually present at the conversations you say you have had with Miss Howland, and what nurses do you refer to?

Ans. I think they were. I don't remember having any particular conversations with her alone, and yet I can't say. We had no privacy about it. At that time I should think "Monte" and Mrs. Brownell.

Cross-int. 15. How old, about, was Miss Robinson at the time when, as you say, you asked Miss Howland if she thought if you should talk with Miss Robinson as you would with one of your own children, it would be of any use?

Ans. I can't tell you how old she was then or is now; I think about three or four years ago; time and dates are not impressed on my mind at all.

Cross-int. 16. When, according to your best recollection, was the addition put on to the house?

Ans. I should think the last time Miss Howland went to the Hills to stay any length of time. I think it could not have been two years before her death that it was put on; that is my impression.

Cross-int. 17. Should you think it was more, or less, or about one year before her death?

Ans. I should think it was less than two years. My impression is that it was rather more than a year; she was not in the house at the time, and I had no occasion to go there.

Cross-int. 18. Was Mrs. Brownell or Miss Montague present when, as you have said, Miss Howland told you that Miss Robinson said she was afraid that Mrs. Brownell might poison her, Miss Robinson?

714

Ans. I don't think they were, if I remember rightly. I don't remember, for the nurses were going in and out the room, but my impression at the moment is that they were not.

Cross-int. 19. Are you acquainted with Mrs. Sarah M. Howland, and how well?

Ans. I know her very well, but not so intimately.

Cross-int. 20. During the period you have testified about, did you meet her at Miss Howland's; and, if so, how frequently?

Ans. I used to see her there very often when I went there?

Cross-int. 21. Have you seen her since the death of Miss Howland; and, if so, how frequently?

Ans. I have occasionally seen her in the street, at meeting, at her own house, and sometimes at my house.

Cross-int. 22. Where were you when you received the porringer and cake-basket of which you have spoken?

Ans. At home. Our man brought them. I sent him to Sarah M. Howland's. She told me they were there, and whenever I sent for them I could have them.

Cross-int. 23. How are you related to Gideon Howland, the grandfather of Sylvia?

Ans. If any, it is very distant. The father of Sylvia was my uncle, my father's brother.

Cross-int. 24. Was your father a son of the Gideon Howland who was the father of Sylvia Howland's father?

Ans. The Gideon Howland who lived at Round Hills was the father of my father and of Sylvia Ann's father.

Cross-int. 25. Will you describe the cake-basket you say you received, whether it was solid or open work?

Ans. I have only seen it twice since I had it. It is only plated, and I can't say certainly. I think it is open, more properly a fruit-basket than a cake-basket.

HETTY H. HUSSEY.

715 FRIDAY, *Sept.* 21, 1866.

Deposition of Benjamin Irish.

I, Benjamin Irish, of New Bedford, in the county of Bristol, and State of Massachusetts, aged fifty-two years, on oath say: My occupation is that of clerk. I have been in the employ of Isaac Howland, jr., & Co., for twenty-two years past. I knew the members of the firm—Mr. Mandell, Edward M. Robinson, and Sylvia Ann Howland.

Interrogatories by respondents:

Int. 1. Please to examine this document, R. C. P. 1; and say whether you saw Edward M. Robinson, Thomas Mandell, and Sylvia Ann Howland sign it.

Ans. I did, and attested it with my own signature. I attested their signatures as a witness. The same is true of the following papers: R. C. P. 2; R. C. P. 3; R. C. P. 4; R. C. P. 5; R. C. P. 6; R. C. P. 7; R. C. P. 8; R. C. P. 9; R. C. P. 10; R. C. P. 11; R. C. P. 12; R. C. P. 13; R. C. P. 14; R. C. P. 15; R. C. P. 16; R. C. P. 17; R. C. P. 18; R. C. P. 19; R. C. P. 20; R. C. P. 21; R. C. P. 22; R. C. P. 23; R. C. P. 24; R. C. P. 25; R. C. P. 26; R. C. P. 27; R. C. P. 28; R. C. P. 29; R. C. P. 30.

Int. 2. Did you take one from the bundle marked 31 in red ink on the back?

Ans. I did.

Int. 3. What is it?

Ans. A bill of sale from Reuben Chase, 2d. It has no signature but his in it. The other papers, that are marked as follows, I answer as to in the same way that I did to the first interrogatory: R. C. P. 32; R. C. P. 33; R. C. P. 34; R. C. P. 35; R. C. P. 36;
R. C. P. 37; R. C. P. 38; R. C. P. 39; R. C. P. 40; R. C.
716 P. 41; R. C. P. 42; R. C. P. 43; R. C. P. 44; R. C. P. 45;
R. C. P. 46; R. C. P. 47; R. C. P. 48; R. C. P. 49.

Int. 4. Whether or not Miss Howland signed these bills of sale at one time?

Ans. All signed at one time, the second day of April, 1860. The

others, Mr. Mandell, Mr. Robinson, and myself, all signed at the same time.

(The papers above identified are now formally put in the case by respondents.

The witness is then cross-examined thus by S. Bartlett, esq., of counsel for claimant:)

Cross-int. 1. Did you take them up to Miss Howland yourself for her signature, and remain with her till they were signed?

Ans. I did.

BENJAMIN IRISH.

717 FRIDAY, *Sept.* 21, 1866.

Deposition of Albert S. Southworth.

I, Albert S. Southworth, of Boston, in the county of Suffolk, State of Massachusetts, aged fifty-five years, on oath depose and say: My business is photographing. I have been engaged in that business about twenty-five years, except an interval of a year or two in California, and a year or two in Vermont.

During the past six or seven years my attention has been very much taken up with questioned handwriting, matters of controversy before courts and between individuals, anonymous communications, simulated writing, forgeries, and such like. In the earlier part of my life my business was teaching, and a portion of the time teaching penmanship particularly.

Int. 1. Whether or not, in connection with the art of photography, have you had occasion to examine the different branches of this subject?

(Objected to for form.)

Ans. I have. In illustrating and demonstrating the peculiarities of handwriting by enlarging and magnifying it, so as to make it easy for the ordinary eye to follow fine lines and changes, to make more apparent genuine signatures, or to clearer show made-up ones.

(The counsel for respondents put into the hands of the witness original exhibit marked F. W. P., 1; also bills of sale marked R. C. P., 1 to 30, inclusive, and 32 to 49, inclusive; and exhibits marked R. C. P., 50, and R. C. P., 51; also exhibits marked F. W. P., 10, and F. W. P., 15, and then puts the following question:)

Int. 2. State whether or not you have made examinations of the papers put into your hands and the signatures thereto, and whether or not the signatures to exhibits marked F. W. P., 10, and F. W. P., 15, are genuine signatures?

718 (Objected to on the ground that in the state of the pleadings in this case the question is not open to the respondents, and so is incompetent; and, farther, that it is leading; and gives notice that any cross-examination of this witness upon the subject of this interrogatory will be de bene esse, and not waiving the objection.)

Ans. I have made examination of all those papers—all of the sig-

natures. These two signatures to Nos. 10 and 15 are simulated signatures of the hand in the standards and in No. 1, F. W. P.; and are made up, traced, and copied by another hand from No. 1 as an original, and are not genuine.

Int. 3. State the examination which you have made of Exhibits F. W. P., No. 10, and F. W. P., No. 15, and the other papers above named, and give the reasons for the conclusion which you have stated.

(Objected to for form and substance.)

Ans. I have examined those papers repeatedly for the past four or five weeks. I have compared each and all the signatures by every test with which I am familiar. I have superimposed them one upon the other; have analyzed each of them in all their parts, measuring each and all of them with care. I find No. 10, F. W. P., to have the same general mechanical effect or picturesqueness when seen at a little distance, particularly in the length of the name, the length of each word in the name, and length of spaces between each word. I find, in these particulars, almost mathematical exactness. I have meant to refer to F. W. P., 10, and F. W. P., 1; these are the papers I superimposed and compared. As I lay these two papers one upon the other, so as to bring their margins the same, they each have the same width of margin on each side; they each have the same slant in relation to the base-line of each paper, so that the eye sees them parallel; they each have the same curvature, very nearly, from point to point, extending through the whole name from S to l in each, and from l to a; from the first part of A to the last part of the last n in Ann; from the first part of H to o, from o to l in Howland; from l to the first part of n in each name, making a succession of lines of curvature on the same radius. When 10 is superimposed on 1 the lines hide or cover 1 from vision almost entirely. The only remarkable discrepancy is the dot of the i, which seems in 10 to stand over the

719 l. The movement of the hand in 10 is very slow, and the lines have that varying movement or effect in many places, which we see in tracing. The first tracing over is mostly covered up by again touching the paper after the first mark or touch of the pen, touching the lines. The y has all been overwritten; in l the overwritten mark does not commence quite as soon as the underwritten, and we there see it. The movement of the pen in A, from the commencement toward the top, seems made with a hitching motion, stopping to start onward, and making the hair stroke larger than the opposite body stroke in the same letter. The last n in Ann has been overwritten; there is a double stroke from the turn of v to the finish. The commencement of H, the wave line, is very heavy—has been overwritten; the wave from o to w, from w to l, the last part of a, and the last part of d. There is scarcely a forward movement—a ready forward movement—in the whole name.

In 15, F. W. P., the mechanical arrangement of the name in its general measurement and spacings is very nearly the same. The words are not so loaded with ink, and the tracing is more perceptible.

There is no forward quick motion of the pen, ready motion, from beginning to end of the name. The general measurements are

nearly the same as the other two, and as near No. 1, F. W. P., as I should expect would be marked with a pen. In its effect to the eye it is a little lighter in tone than No. 1, while No. 10, from the amount of ink, is a little darker. No. 15 has a touch under the bottom of the S, and also under the commencement of the bottom of A, a little horizontal touch which seems like a measure, or a bound; likewise at the end of d. The top of A is unlike the A in either of the others. In other respects the mechanical effect of the three to the eye in the distance is generally the same; the base-line of the writing is very nearly the same, giving the same radius of curvature as the others. The margin of F. W. P., 15 does not match with the margin of 10 or 1.

When No. 15 is superimposed on No. 1, the right-hand corner of No. 15 comes a little lower than the left-hand. By bringing it a little lower the three names in general effect seem parallel. When these names are arranged one over the other, so that the first touch of S in each shall be perpendicular, or one exactly over the other, a parallel ruler fastened at the left margin, there may be twelve lines drawn through the names touching the same point in each one, nearer than can be made with the ordinary movement of a good pen. To be precise about it, they would have to be drawn with a point. These and other measurements and lines which may be mathematically drawn over and under each name in a horizontal direction, and the same points in each, will very nearly coincide.

I have measured in this way more than forty-five names of Sylvia Ann Howland, signatures of Sylvia Ann Howland, attached to these papers, bills of sale marked "R. C. P.," dated all of same date, Apr. 2nd, 1860, and I do not find any two of them having in the length of the name, the length of each word in the name, and length of space between each word the same dimension; and when lines are drawn horizontally over and under, the variations answer in some instances to nearly half an inch. The hand of Sylvia Ann Howland, as shown in these bills of sale standards, produced lying here, and as seen in No. 1, F. W. P., is forward, direct, plain, without superfluous marks or ornaments. The first touch of the pen is nearly straight down. The proportion between hair-strokes and body-strokes is well preserved. In crossing the A in No. 1, the termination of the right-hand body-stroke is continued into the movement to cross the A, with a circular motion, concave upon the upper side, carried a little to the left, turned and crossed to the letter n, but little below the level of the small letters. In Nos. 10 and 15 the pen starts back from the bottom of the body-stroke of A, a little upward, is curved to the left until it reaches to the opposite side, concave on the under side; it then comes round and is carried to n—very much lower in proportion than the cross of the A in No. 1. The movement from right to left in Nos. 15 and 10 is around and over, while the movement in No. 1 is around and under, making it exactly the reverse; while the general effect of these three signatures, Nos. 1, 10, and 15, is the same in their mechanical arrangements. The characteristics

of hand, which distinguish separate hands, on near and close examination, become very apparent.

Directions in the movement of the pen in the commencement of S, the turn as it goes to make the loop of S, the shape of the loop itself and its slope, and the curvature of the body of S resemble each other in 15 and 10, and do not resemble the same movements in 1. The turns at the bottom of l in Sylvia, No. 1, of i and of a in Sylvia, of the last part of the last n in Ann, and of l in Howland have two angles or corners, which show them to be characteristic of her hand.

721 The same angles are seen after the first touch of S in the turn. The same turns in No. 10 are oval, or with one angle, and are characteristic of the hand that wrote No. 10. The hair-stroke of l in Sylvia, and of l in Howland—in No. 1—is concave on the left or upper side, while the same hair-strokes in 10, and l in Sylvia—in 15—are concave on the right or under side at first start, and then concave upon the upper side, making a line of two curvatures. These are characteristic of the hand that wrote 15 and 10. The failure to imitate the cross of A, in No. 15 and No. 10, with 1, shows a natural characteristic of the movement of the hand that wrote 15 and 10. The wave lines from v to i in Sylvia, from o to w and w to l in Howland, and the wave line of the top of H are well made with a motion lowering to the right, or sagging line, while seven out of eight of the same movements in 10 and 15 are drawn straight or with a rising line to the right.

These differences between 15 and 10 and No. 1 show the characteristics of the hand that wrote 15 and 10, and also show the characteristic in that particular of the hand which Sylvia Ann Howland wrote.

The wave line in No. 1 and in the bills of sale and these standard papers have the same characteristics, and do not have the characteristics of 10 and 15. The letter a in Sylvia—in No. 1—o in Howland, a in Howland, and the first part of d in Howland, is nearly straight on the left side, and is a characteristic of her hand. The same letters in 15 and 10 are more circular on the left, and also on the right side, and are not characteristics of Sylvia Ann Howland's hand. The w in Howland in No. 1 has its first part nearly straight, the second part nearly straight and almost perpendicular, and the hair-stroke of the last part carried up nearly straight. In 15 and 10 the same marks are much more rounded on the left, the second stroke of w is nearly parallel with the first, and in its form is unlike the same characteristics of No. 1.

The letter H in No. 1 is wider apart from the top, in proportion, than it is in 15; the parts of the letter H in 15, when viewed separately, are not, in any particular, like H in No. 1. The point and slope of the l's in 15 and 10, and loop, are different in characteristics from the same strokes in No. 1. Taking the letters separately of 15 and 10, and comparing those with the same letters and movements in No. 1, there are very few points having similar characteristics.

The bottom turns in Nos. 10 and 15, like i in Sylvia—No.

722 10—H in Howland, l in same, d in same, are acute, angular, leaving in the appearance of the blank on the right a figure less than the angles of a right angle. These are not characteristics of the hand that wrote No. 1. I find, then, in the slow, heavy movements of 10 and 15; the zig-zag lines; the writing over in No. 10; the joining together of letters in No. 15, after the following marks were made, as connecting H with o in Howland; the last part of w with its wave line; the l to a; the n to d, in same word; the general correspondence in mechanical measurements, as seen in the distance, the clearest expression in the two names, that they are either imitations one of the other, or that they are both imitating some other name.

I find that in comparing 15 with 1, it is an imitation of 1 nearer than an imitation of 10, yet not so near 1 as 10 itself. I find, then, 10 an improvement in imitation on 15, in general effect, particularly A and H. For the reasons I have stated, I can come to no other conclusion than that these are intended imitations; that is, F. W. P., 10, and F. W. P., 15, of F. W. P., 1, and that it would be difficult, although they are bad imitations, to do them much better; and from my experience, I believe it to be utterly and absolutely impossible to find three genuine signatures having so many mathematical agreements, and so few characteristics in common.

(Here the witness expresses a desire to look over minutes that he has made of the examinations in question, to see if he has overlooked any point of importance in his testimony.

The witness states, in answer to a question put by the examiner, at the request of the complainant, that the minutes he desires to examine do not contain a written statement of the substance of his testimony, but are notes of the examinations made by him from time to time, scattered over several pages.

Complainant objects to the witness referring to his minutes, but the objection is overruled, and after referring thereto, the witness continues:)

I do not think of anything at this moment to add. I would like to add, that when I speak of No. 1 and 10 and 15, I refer to the papers marked F. W. P., 1, F. W. P., 10, and F. W. P., 15;
723 and when I speak of the bills of sale, I refer to those here, (pointing to the exhibits attached to deposition of Benjamin Irish,) all of which I have examined and studied, and which have my own mark upon them.

Int. 4. State when you first examined the papers marked F. W. P., No. 1, and F. W. P., No. 10, and what examination you made, and how, and to what conclusion, if any, you came.

Ans. In the clerk's room of the U. S. circuit court. A perfect stranger invited me into the room. The papers were lying before me on the table. I took up a bill of sale of a ship, with the signature of Sylvia Ann Howland, and other names, T. Mandell and Mr. Robinson. I took up, immediately following, a deed signed Sylvia Ann Howland. Either the next paper, or the next but one, I took up F. W. P., No. 10. The moment I saw No. 10, the overwriting

and the underwriting affected my mind to question that paper as an attempt to conceal. The covering-up was pretty well done, but not enough to hide several marks of suspicion uncovered.

I went on with the papers, taking up another and another among them, one with blue ink written over a name, and came to No. 1. When I came to No. 1, it had the same effect upon my mind that a figure I had seen before would have in the distance. I immediately looked for No. 10, which had gone under the papers, took one in my right hand, and one in my left, went to the window, and superimposed them as transparencies. On carefully looking at them, I found that the mechanical effect of the two was the same. I expressed my opinion to the gentleman with me, and left the court-house with him in the direction of my place of business. We walked some little distance together, and I expressed the opinion that 10 was copied from 1. I did not know the gentleman nor what relation he had to the case. As he turned to leave me, I asked him his name. He then told me his name was Stetson, from New Bedford.

Int. 5. State as accurately as you can when the first examination was made, and how many times you have examined the papers since, which you then saw in the clerk's office, and which are marked as exhibits here.

Ans. The first was very near the middle of August—a Thursday or Friday, I think—then one day after, or on Saturday, I went
724 with Judge Thomas and examined the paper; spent, I should say, hours in the examination. I think some time in the week following, I examined them again at Judge Thomas's office. I think once again there. At one time, I know, Nos. 1, 10, and 15, F. W. P., were all there at his office, and another time, I think, 10 and 15 were there. Perhaps a week after I examined them at Mr. Palfrey's office. Some weeks or so later, I examined them there again. I examined them here again, at the clerk's room, yesterday, and likewise this forenoon. The length of these examinations have been two or three hours usually; sometimes more.

Adjourned to Saturday, Sept. 22, at 9½, a. m.

SATURDAY, *Sept.* 22.

Examination resumed:

Int. 6. State any other reasons that occur to you, if there are any, tending to strengthen or weaken the conclusion you have given as to the genuineness of the signatures to Nos. 10 and 15.

Ans. I was asked yesterday only in reference to the signatures of Sylvia Ann Howland, as I understand the question. I did not state that I had compared the signatures of 10 and 15 with the handwriting in the bodies of Nos. 1, 10, and 15, F. W. P., with the handwriting of No. 11, F. W. P., and with some other papers marked F. W. P., the numbers of which I do not remember, but which are among these papers numbered in order F. W. P., from 1 to 16 or 17. I have compared the handwriting in the signature No. 10 and 15, F. W. P., with the filling-out of those papers, and the others mentioned; and taking this comparison alone and separate from the com-

parisons of these signatures of 10 and 15, F. W. P., with the other signatures of Sylvia Ann Howland, I can come to no other conclusion than that the same hand which filled out these papers mentioned, made up, copied, and traced these two signatures of 10 and 15 from No. 1.

My first reason is the entire harmony of hand in its expressed characteristic points. The two signatures No. 10 and No. 15, F. W. P., are in harmony with each other.

They are likewise in harmony in the same particulars with the hand that filled out the papers referred to. The power of the hand
725 in light and heavy strokes, for slow or rapid movements, in measure of heights of strokes, slopes, and turns, in form of body-strokes of S; its straight and stiff appearance, without what is termed a double curvature, or line of beauty; the finishing touches of the pen at the termination of letters, and dots of i; the fashion of loops of small l, and their slope when measured from the point under and between the body-stroke to the highest point of the top; the double curvature, or line of beauty, from the commencement of l to the top of its loop; the wave lines from v to a at the top of H, from o to w, and from w to l; the rounder blank, inclosed in the o part of a; the turns at the bottom of l, i, a, n, and w, and d; and the peculiar finishing stroke of d, leaving on the outside an acute angular blank, are the common characteristics of the hand in the filling-out of these papers, and the others referred to, and lead me to the conclusion that it must be the same hand.

The power to write over another line, so as to cover it, is seen in the letters s, i, g, in the paper marked No. 1, F. W. P., immediately after the signature. The peculiar body-strokes of S, in Nos. 10 and 15, is seen in the letters I, S, J, in the filling of No. 1.

Upon now referring to the original exhibits, I find that the papers I referred to, the numbers of which I could not recollect, are F. W. P., Nos. 2, and an envelope marked No. 14.

(The witness here proposes to refer to his minutes of references to points or same characteristics in 10 and 15, their locality in the filling-out of Nos. 1, 10, and 15, and also in the other papers. These minutes were made upon my previous examinations of these papers.

Complainant objects, upon the ground that, if upon the inspection of the originals, now before the witness, he cannot find and state the marks or distinctions upon which he relies, he cannot go to the memorandum to find them there.

It is ruled by the examiner that the witness may be permitted to look at his minutes for the purpose of refreshing his recollection.)

In the filling of No. 1, F. W. P., the habit of the stiff body-stroke of I, in the first line, and its finish or point, is identical with the body-stroke of S in the signature in No. 10. The S in the word second, sixth line from the bottom, has the same finish. (I still refer
726 to No. 1, F. W. P.) The body of I, after the word first, in the middle of the page, has the same finish; the body of J, in January, has the same straight, stiff appearance. The peculiar, stiff movement in the wave line of H, in Nos. 10 and 15 signatures, is

seen in the words T in Thomas, T in Taber; on the next page, in No. 1, twice in the word third, in the word Thomas following, and again in the word Thomas following.

In No. 10, I and S, in the first line, the whole of (S;) the body stroke of I, before give; I, before the word "have;" J, in the word "Judge;" I, before "wish," on last page; I before "am;" I, before "therefore;" F, in Father; body of L, in "Lord;" body of S, in Sixty—in their straight, stiff appearance, are characteristic of the same points in the signatures of No. 10 and 15, F. W. P.

The first touch and turn of S, in Nos. 10 and 15 signatures, in their turn, slope, and form, are found in the same movements, very often repeated in the filling of Nos. 10 and 15, in the filling of No. 11, No. 2, and No. 1, (all F. W. P.)

Leaving out the slow movement—apparent in the signatures 10, Nos. 10 and 15—and the attempted mathematical tracing, the hand generally, in the signature to those numbers 10 and 15, conforms to the filling of Nos. 1, 10, and 15, 2 and 11, and also the address on an envelope marked (14, F. W. P.) The peculiar characteristic of the cross in A, to the signatures 10 and 15, by starting low down on the right-hand body-stroke of A to cross to the letter n, are seen in the movement connecting the two body-strokes of the first H on the envelope No. 14; also seen in the turn from the right to the left, concave on the under side, as it is swept around to connect with "e" following. This same habit of movement to the left, with a concave curve underneath, is seen in the next H, and in H, the last letter on the address on the envelope.

This movement is also seen in H in No. 1, filling out (sixth line from the bottom;) also the following one in the same line; also in two H's, in the middle of the first page; and occurs repeatedly in the other numbers. The first touch of the hair-stroke in l, and its extension to the top—in the signatures to Nos. 10 and 15—occur constantly in the same movements in the filling out of these numbers before mentioned in the letters l and h; that is, the habit of a double curvature, by making the commencement at the right hand
727 concave, and concave at the left, as the hand proceeds to the top—as is seen in l, in lawful, fourth line from the top, in No. 1; in l, in words publish, declare, and last, in the sixth line from the top, before "will."

The looping of l and the first hair-stroke is seen in the commencement of "h," and other similar movements—commencing with a hair-stroke and going high up for a long letter. The first turn of v may be seen generally through the writing corresponding with the letter v in Sylvia. The "i's" in No. 10 signature and 15 are natural in the hand of the filling. The connected letters, a, n, d, in Howland, have, in their size, form of body and hair strokes, turns, loops, connections, and ending, the same characteristics. The H in Howland, No. 15 signature, has, in its first and last parts, characteristics of the hand in the filling of the numbers before mentioned, when separating its two parts, so as to make the first part a T, and the last part "l." The habit of the hand in the filling of the papers before men-

tioned, when making too long strokes above the line, is to make those strokes nearly parallel.

The H in 15 signature has its two parts nearly parallel, and no imitation of the H in No. 1 signature. The delicate characteristics of this handwriting, as seen in No. 1 signature, could not be seen and traced through the papers on which Nos. 10 and 15 signatures are written, while general forms and spaces would appear indefinite somewhat, and as though in the distance.

The letter "a" in its whole shape, in Nos. 10 and 15, is natural with the hand in the filling of the papers before mentioned, and may be found in No. 1 in Howland, and in ten or a dozen other words on same page; on the next page there are nearly as many. In the filling of No. 15, there are very many of the same fashion, varying only in size.

The letter "n" is very recognizable, running with naturalness through the whole writing in various sizes. The blank point made by the down-stroke, turn, and finish of "d," in Nos. 10 and 15 signatures, in such like turns and strokes in the filling, constantly occurs. The characteristic points common to the signatures in 10 and 15, when carefully counted, amount to forty or fifty in each signature, as compared with the characteristic of the filling out of the papers before mentioned; and these are not characteristics of the signature of No. 1, or of Sylvia Ann Howland's signature in the standards. I should say then, generally, that in comparing the signatures on
728 Nos. 10 and 15 with the filling out of Nos. 10 and 15, Nos. 1, 2, and 11, and the address on the envelope 14, there can be, in my mind, no doubt but that they are all written by the same hand. And my mind would have come to the same conclusion had I not have had any genuine writing of Sylvia Ann Howland's before me. I should say, also, with the signatures 10 and 15 alone, I should have considered them simulated without any other writing whatever. Taking either of them separately, I should have believed them simulated from the internal evidence in each; and taking them with the signatures of Sylvia Ann Howland in either of the three particulars which I have mentioned, alone, with the filling and altogether, in either of those three there is overwhelming evidence, in my own mind, that signatures to Nos. 10 and 15 are not genuine.

Int. 7. State what you mean by the term angular blank.

Ans. I mean the white paper at the right of the down stroke in d, and likewise above the stroke of d from the turn to the finish, making a point or angle, if you were to exactly cut off the "d" and leave the paper; by the blanks of o, a, and d, I mean the white paper cut out of the inside without cutting off any of the stroke; by the blanks under and above the line, I mean the cutting out by following either above or below the line the pen-strokes, so as to separate the writing from the white paper.

Int. 8. From your examination of the signatures to the bills of sale referred to, state whether or not you found any such mechanical correspondence between them, or any two of them, as you found between Nos. 10 and 15 with No. 1.

(Objected to for form.)

Ans. I have examined and measured every signature on the bills of sale, in the length of its whole name, length of each part of the name, length of spaces between each part of the name, and right and left margins of the paper upon which they are written. I have measured them nearer than can be measured with the eye—to less than the one thirty-secondth of an inch. There are no two alike in all of these measurements together; nor any two the differences of measurements of each of the parts put together do not amount to more than two-thirty-secondths of an inch; and they vary from two thirty-secondths to more than twenty-thirty-secondths in the amount of those differences; and, in some instances, where the length of the name
729 is the same but parts of the name and spaces vary, or where parts of the name measure the same, or where spaces measure the same, the length of capitals in those signatures, the length of the long letters, as "l" and "d" and "y," vary in their general proportion in length, so as to have no correct or exact mathematical measurement similar to the signatures of 10 and 15, when compared with signature to 1, horizontally or perpendicularly, generally.

Int. 9. When you made your first examination at the clerk's office, state whether or not you had your microscope glass with you.

Ans. I had; as I generally carry in my pocket one with which I can see the end of a fibre of paper.

Cross-examination de bene esse:

(The cross-examination which follows is stated by S. Bartlett, esq., of counsel for complainant, to be de bene esse, and without waiver of any objections heretofore taken.

Respondents do not admit the right of complainant to so examine.

Witness being then cross-examined says:)

My occupation, generally, before the age of twenty-one years, was on a farm in Vermont, except for four years before, when I taught school winters, and attended school generally one term in the year. My writing schools that I referred to were not taught then, at those winter schools. I only taught writing as usually taught in common schools.

At the age of twenty-one I commenced going to school quite regularly; went to Bradford Academy, Vt., nearly nine months; taught school four or five months; went to Phillips Academy, Andover, Mass.; attended lectures on school teaching, teachers' meetings, etc.; and studied for the purpose of learning to teach. Was at Phillips Academy three years, except while absent teaching. Taught my first writing school in Phillips Academy; afterwards taught select schools, and writing schools, and had just closed my school in Springfield, Mass., when I was requested by an old room-mate to come to New York city, to take hold of daguerrotyping. That was in the winter of 1839 and 1840.

I went to California in the winter of 1848–1849. I was there fourteenth months. I exercised out of doors in the mining
730 country, dug, and did everything I could properly do in the open air, as one great object of my going was to get away

from the confinement of many years, where I had been steadily employed teaching and studying. Since then I have been a year or two in Vermont. I went on to a farm. My business principally was the settlement of my father's estate, the general care of a farm, which come into my possession by the death of my wife's father at the same time, in connection with attention to disputed signatures in handwriting, which occupied a considerable part of my time. The most important of those cases, so far as property was concerned, which I remember now, was what was known in Norwich, Conn., as the will case. I think some of the heirs, through their counsel, employed me; the particulars I did not understand.

I was called to examine paper. There were several wills, but I saw but one. I was called upon to examine that document, signatures and all, and see if there had been any changes in it. It was settled the evening before court in some way, and I was not called as a witness. I was employed by counsel who questioned the genuineness of the document. My opinion was that the signature was genuine, but that there were fraudulent interlineations in the attempted imitation of the handwriting of the testator. I was also sent for to go to Boston twice to testify before the U. S. circuit court, and once before the U. S. district court, in the same matter. It was in regard to identifying handwriting in account-books with that on an envelope. I was employed by the government to examine the papers, and see if they were written by the same hand. The government claimed the identity of the handwriting. I testified that they were identical in my judgment. I had also, during this time, (respondents here object to these inquiries as incompetent,) papers for examination, which were considered unfinished matters. I was called as a witness, to Boston, into court, before Judge Chapman, by Mr. Ellis, in another case. The question was, as to the time in which an endorsement might have been made, and the differences between that and other writings.

Mr. Ellis was a lawyer in the Old State House block. I can't tell what Mr. Ellis's desire was; he only wanted me to examine the papers.

Cross-int. 1. What was the ground taken by Mr. Ellis's client with reference to these differences—that they existed or did not exist?

(Objected to as incompetent and immaterial.)

731 Ans. I can only remember about the particulars of this case, that Mr. Ellis and, I think, his client wanted to have me go upon the stand after I made the examination, and give them my opinion.

Cross-int. 2. In consequence of your opinion?

Ans. I do not think they would have wanted me to get on the stand if it had been different. I do not now recollect particularly any other cases while in Vermont.

Cross-int. 3. Since you left Vermont, have you been called on as a witness in any cases pending in court? If so, name all of them, as near as you can recollect.

Ans. I recollect one, when Mr. Bartlett employed me, or examined

me. I only recollect the names of counsel and of Thompson as one of the parties. Mr. Paine was one of the opposing counsel. The question there I do not remember. It was about a questioned piece of writing.

Cross-int. 4. Whether or not was the opinion you gave the counsel who called you in favor of their client or not?

(Objected to for form and substance.)

Ans. I think it was.

Cross-int. 5. Name any other cases you can recollect in which you have been called as a witness.

(Objected to as above.)

Ans. I was called in a case by Mr. Nickerson, the lawyer; and Messrs. Hutchins and Wheeler were opposing counsel. I think it was before a commissioner. The question was as to the genuineness of writing—interlineations.

Cross-int. 6. Was the opinion you gave him in favor of his client?

(Objected to as above.)

Ans. I think it was.

Cross-int. 7. Do you recollect any other case in which you were called as a witness, either before a court, magistrate, or referees?

(Objected to as above.)

Ans. I was called in the case of a complaint by the Faneuil Hall Bank against a young man for forgery. I was called for the government. I was first employed by the directors of the bank.

(Objected to as above.)

732 Cross-int. 8. Did you give the directors the opinion that it was or was not a forgery?

(Objected to as above.)

Ans. That it was.

Cross-int. 9. Do you remember any other case?

Ans. I was called into court in another case, but not called on the stand. It was the question of the genuineness of the signature to an order, or the order itself. I was employed by Messrs. Nickerson and Sweetser, or their client; I don't remember which came first.

Cross-int. 10. Did they wish to establish the forgery or genuineness of the paper?

(Objected to as above.)

Ans. I think they wished to establish that the paper was not genuine.

Cross-int. 11. Did you give them an opinion, when they called upon you, that the paper was or was not genuine?

(Objected to as above.)

Ans. After examination my opinion coincided with theirs.

Cross-int. 12. Can you remember any other case of the description named?

Ans. I do not now remember any other instance.

Cross-int. 13. You have found this a very lucrative occupation, have you not?

(Objected to as above.)

Ans. I should say that I am generally fairly and well compensated.

If I knew what Mr. Bartlett considers a lucrative occupation, I could answer better. I might consider an occupation lucrative which he would not. I do not think, for the time I have spent in studying handwriting, that anything but the pleasure of it has paid me. All the money that I have ever received in this business would not be as much as I could earn in the same time in my business of photographing.

Cross-int. 14. How large is the largest compensation you have ever received in any case?

(Objected to as above.)

Ans. I suggested a few questions ago, that I might have to throw myself upon the protection of the examiner in regard to answering as to private matters; I now desire to ask his ruling upon the question, whether it is my duty to answer it, and will abide by it in my answers.

733 (The examiner rules that the witness is not required to answer it, and declines to order him to do so.)

Cross-int. 15. How large is the largest sum you have ever received for services similar in amount and kind to those rendered by you in this case to respondents?

(Objected to as above.)

Ans. I never had a similar case.

Cross-int. 16. Have you ever had a case involving as much labor as this?

(Objected to as above.)

Ans. I have not. I may have had cases before me for a longer time, and to which I devoted as much time.

Cross-int. 17. What is the largest compensation you ever received in the cases last mentioned, and wherein do they differ as to standard of compensation from this case?

(Objected to as above.)

Ans. I decline to answer, unless the magistrate considers it my duty, while the word compensation stands in question; as to the latter part of the question, the word compensation still stands as a part of the question. I shall still adhere to my first suggestion to the magistrate, that I shall be guided entirely by what he considers my duty.

Adjourned to Thursday, Sept. 27, 10 a. m., by agreement of parties, and the appointment of the examiner.

THURSDAY, *September* 27th.

Witness resumes:

On considering the question since it was first asked me, I will withdraw my declining to answer so far as it relates to myself and what I consider my own private matters, and will answer the question as respects compensation, still believing that I am not required to answer it. The highest compensation I ever received was ($300) three hundred dollars.

Cross-int. 18. How long have you been employed in this matter,

and what compensation do you expect to receive? Have you made any journeys in regard to it; if so, where and how frequently?

734 Ans. Since the middle of August, or near that; as to my expectations, I have formed none. I went to New Bedford once; that is all the journeying.

Cross-int. 19. You have labored a good deal in the matter, have you not, from the time you first took it up; and what do you think would be a fair compensation?

Ans. I have labored a good deal; I do not know how much more may be necessary for me to do. As it regards my estimate, I do not consider this any time for me to reflect upon how much it ought to be, and I have not done it.

Cross-int. 20. Turn it in your mind, and give us your present judgment as to what would be a fair compensation.

Ans. I cannot do so until the matter, so far as I am concerned, is finished.

Cross-int. 21. Will you answer the question as to your past services in this case?

Ans. The responsibilities of my present situation forbid my giving my mind to it.

Cross-int. 22. Should you think a thousand dollars too small a sum?

Ans. I can no more go into that subject under present circumstances. I cannot go into that subject under present circumstances.

Cross-int. 23. Looking at it off-hand, should you think a thousand dollars would be too small?

Ans. I cannot, under present circumstances, consider any question off-hand.

Cross-int. 24. I repeat the question.

Ans. As I am now circumstanced, I have deferred other questions since I took up this, where great interests were at stake, until this was completed, and refused to consider them off-hand. I cannot now go into any off-hand judgments in the presence of this court; I am never accustomed to do so.

Cross-int. 25. What court do you suppose yourself to be in the presence of; and does that create your difficulty in giving us an off-hand opinion?

Ans. Not the court; but any court where I was sworn, and giving testimony upon a particular matter. I suppose myself before

735 a magistrate appointed by the United States court; that he is amenable to them, and I to him.

Cross-int. 26. You know, do you not, the character and extent of the services you have rendered the defendant in this case hitherto?

Ans. My mind has been so much taken up with other things, that I have not considered it in amount in any way whatever.

Cross-int. 27. Have you not just answered that you had put by other and grave things to consider this matter? Read your answer to the 24th cross-interrogatory and say if it is true.

Ans. It is true.

Cross-int. 28. How many books of manuscript have you written in this case?

(Objected to for form.)

Ans. I am accustomed to use small books containing a few sheets of paper; and to fill out, and partially fill out, others in analysis of handwriting. I have done the same in this case, and have used perhaps half a dozen, varying not much from that—some of them perhaps having not more than two or three or four pages written in them, and others filled out.

Cross-int. 29. Have you the books here, and what is the size of the pages, and how many pages have you written?

Ans. Some, and not all. The pages are about the size of a letter sheet. As to the number of pages, I can't say; I have not paged them. A general analysis of hand usually requires me to write from thirty to sixty pages where the analysis embraces comparison between signatures which are genuine and similar handwriting, and simulated signatures and the handwriting with which to compare them.

Cross-int. 30. Will you refer to your books, and state to the magistrate, before this examination is closed, what number of pages have been written by you in this case?

Ans. As far as I can, I will do so.

Cross-int. 31. While you have been testifying upon the defendants' examination, have you not constantly referred to those books to aid you?

Ans. I have referred to them to aid me as to mathematical numbers and localities in lines, so as to more readily mark places; and in giving reasons for my opinion, looked them over to see if I had omitted any special point. [I think now, after looking them
736 over to find whether I had omitted a special point (complainant objects to clause in brackets as irresponsive,) that I did not go on farther.]

Cross-int. 32. You have stated, have you not, that you have compared the bodies of the handwriting of the documents marked F. W. P., 1 to 10, with the signatures of F. W. P., 10 and 15? Will you now take those papers in your hand, and without reference to your written books, state in detail every fact or reason which they furnish you in coming to the conclusion which you have stated?

(Objected to as assuming a fact not proved, especially that all the documents from 1 to 16 were examined by witness for the purpose named.)

Ans. I have not so stated, but have stated that there were certain papers within those numbers which I had so compared.

(Upon this answer complainant proposes to put another question, as the residue of the question cannot be answered until he does.)

Cross-int. 33. Will you take the documents F. W. P., 1 to 16, inclusive, and examine them, and say which you did use in making the comparison?

Ans. F. W. P. No. 1, F. W. P. No. 10, F. W. P. No. 15, F. W. P. No. 2, F. W. P. No. 11, and an envelope, F. W. P. No. 14.

Cross-int. 34. Were those papers selected from the rest for you, I

mean from the documents from No. 1 to 16, inclusive; or did you select them yourself? Were all those documents shown you?

Ans. All of the documents were shown me on the table before me, except No. 15; and afterwards I found No. 15 in the same package or envelope, and examined them myself, independently of any suggestions from others, entirely that I remember. No person suggested comparisons between signatures to 10 and 15, and any filling out whatever, or anything except the signatures, Sylvia Ann Howland, to standards.

Cross-int. 35. Then you mean to say, do you, that before giving your testimony you had seen and examined all the documents from No. 1 to 16, inclusive, and that you yourself, unaided, made the selection of the numbers that you have stated?

Ans. I do mean to say so.

Cross-int. 36. Will you now take those papers that you selected, F. W. P., 1, 10, 15, 2, 11, and 14, into your hand; and, without reference to your written books, state in detail every fact or reason which they furnish you in coming to the conclusion which you have stated?

737 Ans. I will do so, understanding that I may use the enlarged copies of 10 and 15 for convenience. I will do it without those, if desired.

Cross-int. 37. Will you answer the question, using your eye merely on the originals; and if you desire it, your lens?

Ans. Taking signatures to 10 and 15 and comparing them together—

(At this point, the counsel for complainant, saying that he desired to make the question more specific, adds to the end of the 36th cross-interrogatory after the word stated, as follows: That the same hand which filled out those papers made the signatures to No. 10 and 15. To the question thus modified, the same being stated to witness, he replies:)

I take the signatures first, because they were first put into my hands. I first make an analysis of those signatures, and learn if possible the characteristics of the hand that wrote them, noting the characteristics in each name, in the whole name to each paper, and in both of them together. I find in No. 10 common movements in several different letters, which show me naturalness in their form generally by being several times repeated

Beginning with the first turn of the first part of S, I find that same turn occurring in a in Sylvia, and in l. Taking the turn at the bottom of l in Sylvia, I find it in i, recognize it in the second part of the first n in Ann, the last part of d, turn at the bottom. The narrow appearance of v, and its wave to i, the narrow appearance of o in Howland, and its wave line to w, and the wave line of w to l, repeat the same habit or characteristics. The peculiar form of the n's, by being spread generally at the bottom, and, likewise, their turn at the top, lead me to another characteristic. The nearly straight mark of the first part of a, from near its top to quite near its bottom, and its hair-stroke to the second part, and the second part in its slope and position compared with the first part taken with the

a in Howland and the first part of d, repeat another class of characteristics of the hand, particularly in the form and slope of the different parts, and in the openness of each letter at the top. The loops of the two l's, and of S at the commencement, in their form and slope, point to me another characteristic. Taking now these characteristics and going to No. 15, I find the first touch of the S and its extended mark to the turn, and after the turn, the turn of l in Sylvia, the turn of last part of d in Howland, similar in their characteristics to
738 the turns before mentioned in signatures to No. 10. I find in v in Sylvia and o in Howland the appearance of narrowness, also in the wave from v to a and w to l. I find a in Sylvia, a in Howland, and the first part of d to have the same characteristics. I find that l in Sylvia the hair-stroke is concave at its first start on the right side ; as it approaches the top, it is convex. I find the same movement in l in Sylvia, No. 10 ; and I find in l in Howland, No. 10, the same movement nearly covered up by a line drawn over from w to l. Finding three out of four similar movements in signatures 10 and 15, I consider them characteristics of the hand. The loops in 15 are blind, the same as in No. 10 in S and each of the l's, and coincide in that respect with the same strokes in No. 10.

The general appearance of the last part of H in Nos. 15 and 10 form also a characteristic with the l's generally in their slope and turns at the bottom. The habit of a varying size in the letters, as o smaller and w larger, n smaller and n larger, shows to me a varying habit of sizes in the hand.

The cross of A in each, by sliding the pen upward a little, on the down-stroke of A, carrying it circularly to the left, bringing it down concave on the under side, making a loop lower down than the bend of the line of the smaller letters following, considerably extending the line to the commencement of the next letter much higher up to the right, leads me to another characteristic of the hand.

The endings of the letters in each signature, in a in Sylvia, of each d in Howland, and the blank partially enclosed on the right of each, lead me to another characteristic.

The point at the finish in the S in Sylvia, No. 10, the point at the finish of y in same, the point at the finish of y in Sylvia, No. 15, in its peculiar shape made by the pressure and peculiar manner of lifting the pen, lead me to another characteristic. The peculiarities of the loops in the two l's in each name in 10 and 15, as appears by drawing a line between the hair and body-strokes, at the commencement of the hair-strokes underneath and the highest turning point at the top, form a characteristic in the sameness of slope, generally, in each ; and to this may be added the same remark in respect to S in Sylvia, No. 10.

Each H spreads widest at top, and, from that fact, I should suspect another characteristic. The peculiar joining of i to a in each name, or direction of hair-stroke ; the peculiar joinings of l to a and
739 of n to d in its relation to the height of first part of letters a and d, have peculiar sameness, occurring six times. I should say they are characteristic of the hand.

Going now from these two signatures to the handwriting in the filling of No. 1, the first point I notice is I in the first line—its dot at the finish, the form of the pressure of the pen, and the way the pen leaves it as compared with the same point in signatures No. 10 and 15, in S in No. 10, and in each y in 10 and 15. The hair-stroke of l from y to l in its two curves, concave on the right in its first part, and convex on the right higher up; the same general effect of mark, as seen in C in County, second line of No. 1; l in lawful, fourth line; l in last, sixth line; l in land, eighth line from the bottom; h in her, sixth line from the bottom; h in Thomas, last line; t in these, last line; h in hereto, sixth line over the page; h in have, h in hand, seventh line; h in hundred, ninth line; b in by, eleventh line; l in last, thirteenth line; and in four more instances following in the same general movement, these show me characteristics in the filling of No. 1, and harmony with the signature 10 and 15 in the same point, in the form and habit of the stroke; and in examining this characteristics in the filling of 1 and signatures 10 and 15, I find nothing in the power of the hand that did the filling in No. 1, in these particulars respecting the letter l, which I do not find in the signatures to 10 and 15. The hand that made 1 has the power to make the others, and vice versa.

Taking next the stiff appearance of the body of S in the signatures 10 and 15, or straightness of form of the body, I find that same movement in the body of I in the filling of No. 1; in the F in First, near the middle of the page on the left; in the I before give, next word; F in Farm, on the right, a little below the middle of the page; S in Second, on the left, near the bottom of the page; I before wish, fourth line from the bottom; T in Thomas, last line; T in the word Taber, over; T in third, twice; T in Thomas, third line; J in January, seventh line; S in signed, near the middle of the page on the left. Taking the peculiarity of the loops of S, also the commencement in signatures Nos. 10 and 15, I find in the filling of No. 1, as to the commencement in S in Sylvia; first line in S in School; a little below the middle of the page in S in Second, at the left, near the bottom; in S in Signed, over near the middle of the page; and
740 in S in Sylvia, three lines below—harmony in movement and power of hand, and vice versa, showing the hand that made these in No. 1 has the power to make the same movements in signatures 10 and 15.

In the general form and outline given to the loops in the two S's in the signatures to 10 and 15, and the l's in each signature, I find the same occurring in S in Sylvia, in the filling of No. 1; l in lawful, fourth line; l in last, sixth line; l in last, over fourth line; l in seal, seventh line; S in signed, middle of the page on the left; and generally in the form of l, in its upper part or loop. The fact that some l's are open, and others closed in their loop, does not change their characteristic. The loops of other similar letters, as the top of h, have the same charateristic. I will point out h in her and have, last line but one over the page; and one or two others on the same page.

The habit of the wave line in the signatures, which I have before mentioned, in 10 and 15, from v to i, o to w, w to l, is seen in the third line, from r to i, in Bristol; w to f in lawful, fourth line; d to s in disposing, same line; o to r in memory, fifth line; b to l in publish, fifth line; w to i in will, sixth line; o to w in following, and twice more in same word, seventh line; w to l in Howland, ninth line; twice in Robinson, same line; b to u in buildings, seventh line from bottom, o to v, w to l; in first line over, twice in sixth line, and three or four times below the signature.

In comparison of the large and small sizes of the small letters in Signatures 10 and 15, they occur, s often in No. 1 in the same words as small e before d in remembered; small a in Commonwealth, third line; the small narrow o in word disposing, fourth line; same in memory, fifth line; small a before last, in sixth line; narrow o in personal, at the left, near middle of page; narrow second o in goods, same line, very remarkably; same o in description, eleventh line from bottom; narrowness of o in house, tenth line from bottom; o in the abbreviated word Co's., ninth line from bottom; the last part of u in without, fifth line from bottom, standing wide apart at the bottom, looking in its narrowness like a v; narrow o in Cornelius over, first line; o in Bedford, fourth line; and in our, last line.

The sameness of characteristics in these points between the signatures No. 10 and 15 in same particulars and the filling of No.
741 1 shows in these respects entire harmony of hand—the power of the hand in Nos. 10 and 15 signatures, to make these characteristics in No. 1 filling, and vice versa.

Taking the general outline on the right of a, in the signatures 10 and 15, in 10 a in Sylvia and a in Howland, and in 15 a in Howland, I find in the filling of No. 1 a in Howland second line, three times in the third line, two or three times in the fourth line, in declare in the sixth line, repeated two or three times in the sixth and seventh lines, in the eighth and ninth line, once or twice in the tenth, and three or more times on the rest of the page; over in the first line, the second line, twice in the third, once in the fourth, twice in the fifth, in the seventh, in the eleventh twice, twice in the twelfth, in the thirteenth, and repeated in the following lines. In the general formation, the characteristics are the same in the first part, down-stroke, turn, hair-stroke, place of joining to the last part, and last part of the letter a, making, in this letter in its formation, entire harmony of hand in the filling out of No. 1, with the signatures to Nos. 10 and 15 in the same particulars. The joining of the letter a to n, in Howland, in its form and direction, and the form of n, in each signature in No. 10 and 15, and the line of joining to d, in Howland following it, seen in a and d in Howland, second line of filling in No. 1, the word and, third line, twice in the fourth line, twice in the fifth line, once in the sixth, once in the eighth, twice in the ninth, once in the tenth, once in the twelfth, three times in the thirteenth, three times in the fourteenth, once in the sixteenth, and once more on the first page. It is seen over the page in a and d, before 62 in the word and, and in the word

and, before declared, same word before for, and once or twice more on the same page.

[Coming to the connection of letters, I find the mechanical arrangements of the two signatures to be such; the mathematical sameness in many points; the movement of the hand from point to point; the apparently hidden parts, partially exposed, of short touches and marks—lead me to the conclusion, that in these particulars there is design to imitate and to cover up, (objected to as irresponsive to end of bracket,) so as to disguise either one's own hand, or imitate some other, or for some other purpose.]

I am obliged, then, to separate between certain mathematical and mechanical arrangements in Nos. 10 and 15, and leave them by separating, if possible, the natural characteristics of the hand,
742 from the particular measurement in the length of syllables and words, from forms of parts of letters or whole ones, in these signatures of 10 and 15 which in them do not seem to be characteristic with each other, and to leave likewise spacings between letters and words, and in these particulars follow only general movements of the pen in the characteristics and forms of letters where they are several times repeated.

I find, however, that the "and" even in its measurements, in spacings between letters, differing slightly in 10 and 15, is very often repeated in the filling of No. 1, in form very near the same, in movement entirely unlike.

The movement in the filling of No. 1 is very ready and off-hand, but in these two, taking them separately and together, the movement is only the hand of tracing and copying. In A in Ann, signatures 10 and 15, there is no characteristic except the weight of hand in the last stroke of each toward the bottom, and the loop of each. Taking each of the parts together, of 10 and 15, except these, there is nothing similar, either in form or slope, but the movement of tracing. Taking the loop as a characteristic, I find it in H in Howand, second line, in the filling of No. 1.

H, twice in the ninth line, and twice in the sixth line from the bottom. I find the habit of carrying the hair-stroke of the loop of the cross of A from a lower part, higher to the next letter, in the first letter of the ninth line of the filling of No. 1, and in the sixth line from the bottom. I find then, in this particular, harmony as to the power of the hand in each of the particulars mentioned, in the hand which wrote the filling of No. 1, with the signature to Nos. 10 and 15 in A. I find No. 10 signature to be written over, or patched over, from point to point in various places with second strokes of the pen. I find entire power to write over, and follow the line in parts of the word signed in the filling of No. 1, middle of page, left hand, first word after the signature. I find the point over the i in Sylvia out of place in No. 10, and I find the same in the word witness, the last word of the filling out of No. 1. The short, angular turns—seen in i in Sylvia, No. 10, at the bottom; n last part in Howland; and the d—occurs in the word it, in both the i and t, in the first line of the filling of No. 1; in letters t and d, following, in same line;

in l and d, twice in second line; in i, once, and so forward, very often through the filling of No. 1.

743 I find the abrupt ending of y in No. 10 and 15 signatures in Sylvia, in the fifth line from the bottom; in y and in the habit of finishing or leaving off y in two or three instances on the page. I find it over in the word my, in the sixth line; the word sixty in ninth line, and in the long stroke of the letter p in presence, in the last line but one in No. 1.

The power to bring the hand to a certain point in a down-stroke, and leave it with a dot, is seen exactly in the word day, in the seventh line in the y, so that in my mind the hand that could make the y in day, in the filling of No. 1, has the power entirely to execute the movements in the y in the signatures 10 and 15. And therefore taking those before mentioned in No. 1 with this last one, we have perfect harmony of hand and power of hand between the marks, in this particular, in the filling of No. 1, and the down-strokes of each of the y's in 10 and 15 signatures.

The wave line of H, Nos. 10 and 15, is similar in its stiff movement, commencement, and joining the first body-stroke of H, and being in the loops unlike each other. I leave out the form of the loop as any characteristic of the hand, and take the joining of the wave lines to the body-stroke, and its height from the top of the body-stroke, and its somewhat straight and stiff appearance as characteristic of the hand that wrote these two signatures. I find the joining and height from the top, in each of the words, first, on the first page, in the filling of No. 1; the stiffness and slope of the wave, in the word first, ninth line from the bottom; the slope in the word Thomas, last line, letter T, the stiffness and joining and height, from the top in the word Third, over second line from the top. The remark on the harmony between the same movements in the different papers would be the same as before.

The power of the hand in making the H in Howland, last part of the H in the signatures 10 and 15, is the same that would be required in C in County, second line, No. 1, in filling out. The habit of spreading the N widest at the bottom is seen continually in No. 1, filling out, and in five of the six n's in the signatures to Nos. 10 and 15.

I do not now, without my notes, remember that I have anything further to say of the comparison of the filling in of No. 1, with the signatures to No. 10 and 15.

What might be termed the geometrical movement of the hand, so as to space between parts of letters, is somewhat similar in the

744 connection of the letters i a in Sylvia, in the name after the signature, with the same movements in 10 and 15. The name I refer to is in the sixth line from the bottom on filling out of No. 1.

I now turn from No. 1 to the filling of No. 10. I have so many times alluded to the particular characteristics of the letters in 10 and 15 signatures, that I will now take these referring to the same characteristics in course, in No. 10 filling out: the turn of t and the blank angle at the right in it, on the first line in 10; the t in that same line, the S in Sylvia, in its commencement and first turn; the

form of loop in the S and straight body-stroke; the wave from b to l in publish, third line; the shape of b below its loop as compared with v, in signatures 10 and 15; the word and, the word and in the fourth line; two t's in testament; J in January; the n in n, commencement of the fifth line; the second l in following; the two o's in same word ; hair-stroke of h in hereby, o in revoking, a in made, sixth line; h in the word her in the eighth line, and the word and following in the ninth line; the letter h in her, twice repeated, as to its hair-stroke; letters a n in Mandell, same line; straight, stiff mark of I in tenth line.

J in Judge, same line; the d, last letter in eleventh line; "and" in the thirteenth line; "and" in the fifteenth line; "at" in the fifth line from the bottom; I at the top of the page over, its dot or finish, and in the third line; commencement and first turn of Lord in fourth line; "and" in the fifth line; F in Father, eight line; turn of the t in it, at the bottom of same line and in the ninth line; "and" in thousand, in the eleventh line; h in have, fourth line from the bottom, in its hair-stroke and loop; L in Lord, in its commencement, turn, and body-stroke, and the word "and" in the last line—all point to the same characteristics that I have before mentioned in the signatures to 10 and 15.

Taking No. 15 in its filling out, the angle at the turn of t in it, and the blank at the right of it; the habit of dotting the bottom or finish of a capital letter in I and S, first line; the general commencement of S, its turn, loop, and body-stroke; narrow v in Sylvia, first line, as compared with narrow v's in signatures 10 and 15; habit of carrying the hair-stroke from the first part of a high up on the body stroke, as seen in signature to 15—is seen also in the d, first letter of third line of filling out of 15; the double curve of hair-stroke of h following, the word "and," same line; nd in second, also, "and" in fourth line;
745 hair-stroke of h in hereby, sixth line; narrow v and o in revoking, same line; I in seventh line, stiff body-stroke, and dot finish; h in her, ninth line, "and" following, and "h" also in same line; J in Judge, eleventh line, and in the fourteenth line; "and" in the sixteenth line; hair-strokes of h repeatedly in two or three next lines; I in third line from bottom in its straight, stiff body-strokes ; nd in found, over page, a in after, and once following in same line; two I's in next line; peculiar curved hair-strokes repeated in h several times; "and" in fourth line; narrow o in "old, torn," same line; same in word "fourth," next line; commencement of L in Lord, in sixth line; wave of T in Thousand, "and" in Thousand, and the word "and" following; "and" in seventh line; narrow o's in proof, same line; I in eleventh line and in twelfth line and in fifteenth line; I in sixteenth line; "and" in seventeenth line; likewise a-n-d in hand, same line; and the same letters in the last line but one, twice repeated—these all exhibit characteristics which I have before pointed out in the signatures Nos. 10 and 15.

In No. 14 the loop of H making the cross to the next letter, starts from a point low down on the last part of H, and after the turn is made, is carried higher up to form the loop of e, and onward.

In this particular it is the same characteristic that exists in the A in Ann in Signatures 10 and 15. The stiff wave line in H in Howland, in Nos. 10 and 15 signatures, is seen in the wave of H, and its distance from the joining to the top in No. 14, first capital. The S in the initials has the commencement generally and hair-stroke and almost straight body-stroke; the loop at the top is larger, as to form in perfect keeping. The acute angular turn, seen repeatedly in the signatures to 10 and 15, is seen in the last part of the A, in the initials in 40. The characteristic in the cross of the last H in this address, No. 14, shows the same power of hand as the cross of A in Ann, in 10 and 15.

In the filling out of 10 and 15, and the writing on the envelope 14, these points which I have just enumerated are very common and characteristic, and in the power of the hand that wrote the signatures to 10 and 15. And the point in 10,15,and 14 not found in the signatures to 10 and 15, are all within control of the hand that wrote the signatures to 10 and 15. Whatever of differences there may be in letters in their forms, sizes, spacings, and every thing that I can see pertaining to the handwriting, they are entirely consistent
746 in the filling out, in the power of hand, with the signatures to 10 and 15; and whatever differences there are in mathematical or mechanical arrangement of words or letters, and in the movement of the hand in 10 and 15, are attributable to a partially covered up purpose or design in the tracing and copying, and with this distinction there is absolute harmony of hand throughout.

Taking up No. 2, the first down-stroke in the filling of B, the hair-stroke of E, following in its double curvatures; the turn of t in the word "it" at the bottom; variations of the sizes of small letters in the word remembered; straight body-stroke of I; C in County, second line; narrow o and turn of l at bottom in the word Bristol, in same line and following; variations of sizes of letters in the word Commonwealth; "and" in the third line; "and" in the fourth line; top of the F in First, commencement of second paragraph; both I's following; and fourth line, same paragraph; letter S, first part to its turn, at commencement of third paragraph; "and" at the end of the line; I in the next line; I in Irish, and over the page, first word, and same word following in same line; the wave of T in Trustees, fourth line, second paragraph; narrow v in vacancies, last line but one in that paragraph; commencement of L in word Lastly, third page, second line, its turn, loop, and body-stroke; body of I following; I in word in, before witness, in sixth line; the word and in fifth line from the bottom, and the hair-stroke of h, third line from the bottom, also twice in second line from the bottom—these are common characteristics found in this paper, and likewise found in the signatures to 10 and 15.

For the purpose of brevity, I have not repeated each characteristic as I have passed.

I have classed the characteristics of this last paper. In comparing the pressure of the pen, in making the dot over the i in Sylvia, No. 10, I find its peculiarity in the fourth line, from the bottom of the

filling of No. 2, between the word to wit and that over i in said ninth line from the bottom, after the word forever, near the middle of the page, over, the space, between the words "degree" and "that;" at the end of the first paragraph, after the words to wit, and with slight variations in several other places on the same page. This characteristic likewise occurs after the word testament, fifth line, third page; and over the word Robinson, fifth line from the bottom.

I remember no other points to which I think it necessary to refer in that number.

747 I should remark in the same way precisely, in reference to the harmony between the hand in the filling of No. 2, and the signatures to No. 10 and 15, that I did in relation to the other papers.

I now take up No. 11. The turn at the bottom of t in the second word, and the blank at its right, likewise the d following in the word remembered ; d in Bedford, second line ; l in lawful ; and d in and, fourth line, correspond with the same turn and blank in No. 10 signature. And the same turn and blank is recurring very often on the rest of the page repeatedly, on the second page, and also on the third.

Variations between the sizes of small letters in the word remembered, as in the m's and e ; between m and o in Commonwealth ; the very narrow second o in Commonwealth and its wave to n ; the very narrow o in memory, fifth line, and its wave to r; the narrow second o in following, and its wave to w in seventh line; the narrow v in revoking and its wave to o, eighth line, likewise o, are all characteristic of the narrow v and o in the signatures 10 and 15. The narrow v in the word every, sixth line from the bottom ; the narrow v in the word give, second line from top of second page ; narrow o in the word implore, and its wave to r ; the narrow v and o in the word favor, and their wave lines, fifth line ; narrow o and its wave in nothing, sixth line ; narrow v in unfavorable, seventh line ; narrow o in or, tenth line ; narrow o in property, seventh line from bottom ; also same in same, sixth line from bottom ; o in dollars, second line from bottom; word Thomas, seventh line from the top of third page, are in keeping with the o's in Howland in the signatures to Nos. 10 and 15, as are the v's and their wave lines where I have named them.

I in second line, first page; commencement of S, and its body-stroke at commencement of second paragraph; commencement and loop of S, first letter on second page ; I, fifth line from the bottom ; commencement, loop, and body of L in Lord, last line but one before space for signature, are all in keeping with the commencement of S, and the stiff body-stroke, nearly straight, of S, in the signatures to 10 and 15. The form of y in its top turn in Sylvia; the comparative height between the first part of y in the top of the second part, in the second lines of No. 11, is in these respects in entire harmony with the signatures to 10 and 15.

748 The hair-strokes of l in Sylvia, second line, No. 11, its loop and curvature of body, is in keeping with l in Sylvia, 15; and its turn at the bottom is in keeping with same in No. 10. The

wave from v to i is in perfect keeping with the wave from v to i in signature No. 10; and the turn of i at the bottom, the fashion of the a, are in entire harmony with the same in Sylvia's signature No. 10.

The n's generally in Ann have the same turns, except the finishing turn of the last n in Ann, which is left so as to form nearly the same angle with the d in Howland in No. 10.

The a and n in Howland, second line, the first part of d, the hair-stroke, are all in perfect keeping with the an, and first part of d in No. 10.

Adjourned to Friday, Sept. 28, at 9½, a. m.

FRIDAY, *Sept.* 28.

Witness resumes:

The word and, as it occurs in second line in Howland (No. 11) and same word in third line twice, also in the fifth line; once in the sixth, once in tenth, once in eleventh, once in twelfth, once in fourteenth, once in fifteenth, twice in sixteenth, and repeatedly onward and over the page, and repeatedly on the last page, the letters of this word, when taken together and seen in the distance, so as to lose the disguise and simulation apparent in the signatures to Nos. 10 and 15, have a sameness easily recognizable to an observing eye, to the signature No. 10 and 15. The characteristics common to parts of those signatures in 10 and 15, when compared with each other in the same signature, amount in No. 10 to seventy or more, and in No. 15 to fifty or more in round numbers.

In No. 10 the first touch and start of S, its slope, its turn, its hair-stroke to the top, its loop, its body-stroke, and finish or point, making seven; No. 15 has the same. The y in its commencement, its turn at top, its turn at bottom, comparative height of second stroke, its straight body-stroke, and its point or finish, making 5 or 6. No. 15 has three or four of those. The l in Signature 10 in Sylvia, has its commencement, double curvature, its loop, its slope, its curved body, its turn at the bottom, making six or seven. In signature 15, l in Sylvia has five of these.

749 The letter v in Sylvia, signature 10, in its comparative size, its narrowness, and wave line, has three points. No. 15, v has the same.

The letter i in Sylvia, No. 10, in its straight body-stroke, slope, and turn at bottom, and hair-stroke towards the next letter, has four points.

The same in No. 15 has four. The letter a in No. 10, signature in Sylvia, in its commencement of the o part, its open top, straight left-hand side, turn at bottom, hair-stroke to second part, comparative height of second part, slope of same part, turn at bottom and finish, has nine characteristics.

In No. 15 signature, the same letter has a blind loop, open top, straight body-stroke of second part, comparative height of second part, slope, turn, and finish—making five or six or more characteristics. The A in Ann has, in its first touch as compared with the

first touch of S, a characteristic in No. 10 signature; and, compared with same letter, No. 15 signature, has the bottom of its last part, the sliding back of its pen on the body-stroke, the loop in its turn and form, the cross, its extent to the left, and line of direction to the next letter—making six or more. The turns at the top of the two n's in Ann, (No. 10,) and the bottom turns of the second part of each n, hair-stroke, and finish, the comparative slope of those parts, make ten or more characteristics in the Ann's in 10 and 15.

The first touch of the pen in H in Howland, No. 10, (signature, its slope to turn, its wave line after the turn, the union of the wave line with the body-stroke, comparative height of the wave where it touches the body-stroke to the top, the hair-stroke of the second part from the first and onward to the top, the loop, bottom turn, and hair-stroke towards o, make ten characteristics in No. 10, and seven or eight in the same letter in No. 15 signatures.

The touch of the preceding hair-stroke to o, in signature No. 10, in its compartive height from base-line, the narrowness, the joining at the top, height of second stroke, and wave to next letter, make five or six characteristics. The corresponding letter in 15 has one less characteristic. The first stroke of w, in its body and slope, turn and bottom, height of second part, slope and turn, curvature on the right in hair-stroke from the bottom of second part upward,
750 the wave line to l, make six or seven characteristics in No. 10, and two or three less in No. 15.

The l in Howland has the same as the l in Sylvia, No. 10—making six or seven. In 15, corresponding letter, there is one less. The a in Howland has the same as a in Sylvia—seven or eight or more.

The n in Howland, the same; the same as the n's in Ann—three or four.

The o part of the d in Howland, same as the o part of a preceding, in No. 10 signature; and the last part of d, in its slope, turn, and finish, have, in all, five or six characteristics; n, d, in No. 15, has four or five of these.

These characteristics when regarded in the light of mathematical numbers, do not make up as many as are found in the filling of the papers Nos. 1, 2, 10, 11, 14, and 15, from the fact that fewer letters are required in making these signatures; and that they do not contain all of the letters of the alphabet, or the various sized letters, capitals, and forms found in the filling. The different letters found in the filling require in their formation and appearance here upon the paper, in every particular—I mean those not found in the signatures 10 and 15—no marks, forms, or movements requiring more capacity or more practice of hand or ability, in any respect whatever, than are required to make the signatures to Nos. 10 and 15; and in their parts of movements, their connections to other letters, have the same height of hand and control of the pen; and in them are found, though different, very many of the characteristics enumerated to Signatures 10 and 15.

Indeed, it is more difficult to find forms and characteristics unlike, and not presenting characteristics enumerated in 10 and 15, than it

is to see those that are natural and the habit of the hand; and the whole answer to the question may be, that there is scarcely a point or a place where the hand is not distinctly traced. Not that one of these points or places, or two, or ten, constitute sufficient ground for an opinion, but in their mathematical arrangement and absolute harmony in every respect, disconnected from the simulation of the signatures in 10 and 15, they are like the footsteps of an individual,

(objected to from this point as irresponsive,) under different
751 circumstances—sometimes slow and sometimes rapid; sometimes on a hard path and sometimes in the sand; sometimes with the measured tread on the floor, or on tiptoe on the muddy flagstone; sometimes in the slipper, in the boot, or in the rubber, or barefoot; sometimes in the jostling crowd, the measured step to the drum, the whirl of the giddy dance; and in every other position in which the step or mark could be seen, measured, compared, and recognized mathematically. So many combinations of characteristics are circumstantial truths to my mind, making it an absolute demonstration. I undertook yesterday, on the spur of the moment, to answer Mr. Bartlett's question by pointing out characteristics in detail. I undertook an impossibility; the detail covers the whole; there is not a shadow on which to hang a doubt in my mind.

Cross-int. 38. Will you now take the pen and ink furnished you, and write your full name, that it may be annexed as an exhibit to your deposition?

Ans. I will annex it to the deposition.

(Counsel for respondents here say to witness that he is not obliged to do it now.)

I have my signature here in various places. All the papers I have are at Mr. Bartlett's disposal. I will annex my signature to the deposition.

Cross-int. 39. I desire that it may be done now in the presence of us here; will you do it?

Ans. I decline to write now. I have my signatures here in various places in my books; you may carry them away or do what you please with them.

Cross-int. 40. Why do you decline to write now?

Ans. I do not think it is my duty. I do not feel like writing.

Cross-int. 41. Why do you not feel like writing now?

(Before answering this question, witness looks over his books and papers, and says that he desires to correct his previous answer, as he finds he has left his books having signatures at home, but that he will in a short time furnish as many signatures of his writing previously as counsel desires.)

Ans. I said I did not think it was my duty; I supposed I had answered that question.

Cross-int. 42. I repeat the question. Why did you say you did not feel like writing now?

752 Ans. I feel ready to do my duty. I do not feel that that is my duty, and therefore I do not feel like doing it.

Cross-int. 43. Will you now do what was requested of you in the thirty-eighth cross-interrogatory?

(Objected to as assuming a fact not in evidence.)

Ans. Whenever I am asked by the magistrate to sign my deposition I will sign it.

Cross-int. 44. I repeat the question.

Ans. I know of no other answer proper for me to give.

Cross-int. 45. Until, then, you finish your deposition, and it is closed, you decline to write your name in the presence of the examiner, do you?

Ans. I will write my name at any time or to any paper that the magistrate presents to me and says that it is customary and my duty.

(The counsel for complainant here desires the examiner to order the witness to comply with the request in the thirty-eighth cross-interrogatory; the examiner declining to do so, upon the suggestion of counsel for the complainant, and with the assent of all parties, and under the clause in the sixty-seventh amended rule in equity, which provides "that the examiner may upon all examinations state any special matters to the court as he shall think fit," the question was thereupon brought before his honor John Lowell, one of the judges of the circuit court of the United States sitting as chambers, and the same having been briefly spoken to by counsel on both sides, the judge sustained the objection taken by the witness, and declined to instruct the examiner to order the witness to do as required by said interrogatory.

Whereupon counsel for complainant excepted to the ruling, and gives notice that if the same shall not be sustained by the court at the hearing of the cause, he shall object to the use of the deposition.

Counsel for respondents note that they claim that the decision of the judge at chambers on this point is not the subject of exception, and reserve their rights.)

Cross-int. 46. I repeat the question, and state that the object of the question is to enable the counsel for complainant, by comparing your handwriting made at different times and under different circumstances, to examine you in relation to the correctness of certain portions of your testimony given for the respondents. Will you do what the question asks?

753 (Counsel for respondents here ask that the magistrate might explain the question to the witness, but upon objection made withdraws the request; but the whole is noted at the desire of counsel for complainant.)

Ans. I do not think it my duty to write my name here, but will furnish my manuscripts containing every signature of mine within my reach up to this time, to be used by Mr Bartlett or his friends in a legitimate manner.

Cross-int. 47. Have you looked at your books, or any of them—I mean your manuscript books—since the adjournment yesterday?

Ans. I looked for the purpose of paging, as Mr. Bartlett requested; but not for any examination concerning the papers put into my hand yesterday.

Cross-int. 48. You have now in answer to the cross-interrogatories stated, have you not, all the characteristics, as you call them, of the handwriting of the signatures in F. W. P., No. 10, and 15; and you have also selected the letters in the bodies of papers marked F. W. P., Nos. 1, 2, 10, 11, 14, and 15, which you say have the same characteristics, have you not?

Ans. I do not think I have stated that I have named all the characteristics either in Signatures 10 and 15 or to the filling in the other papers, Nos. 1, 2, 10, 11, 14, and 15. I have intended to state those in the signatures to 10 and 15, all that I could see, and do not remember any omissions. In the filling of the papers just named, to state all and everything in every point would occupy very great length of time. I have only stated the particular characteristics pertaining to 10 and 15 found in the filling in marked and prominent places, and added and explained the reasons for not going farther into details.

Cross-int. 49. Will you now state whether the same letters which you have selected from the bodies of No. 1, 2, 10, 11, 14, and 15 are not also found in the other parts of the same documents?

Ans. I have no doubt but what they are so found.

Cross-int. 50. In giving your direct testimony, you stated the cases in which you had been called as a witness; did you not omit the case of Hunt vs. Goding, both residents of Brighton, tried at Lowell four or five years ago?

(Objected to for form and substance.)

754 Ans. I have not attempted to state all of the cases in which I have been called or examined, or generally. I have alluded to several different cases and counsel who have employed me, in answer to questions. I did not attempt to state them all or generally, and therefore made no omissions.

Cross-int. 51. Is your statement of fact just made as reliable as the other parts of your testimony?

Ans. I should like an explanation of what the "fact" means. (Here the question is reread to witness.) Had I been making a statement of all the cases in which I have been employed and left that out, I should say then that I had omitted that case, either through lack of memory or design. Having never attempted to state cases in detail, I have omitted, in the sense I understand the word, nothing.

I am now and ever ready to state all and every transaction connected with paper examinations relating only to myself. Names and parties connected with me in the same thing, and interested wherever I have been, sworn, when called upon, I will also state as far as I can remember; and will recall by my books as far as they exhibit, making no reserve.

Cross-int. 52. Were you called as a witness in the case last named, and did you testify or not that an instrument or the signature in issue was a forgery?

(Objected to as leading in form, immaterial in substance, and relating to matters wholly incompetent under the issue.)

Ans. I was. I testified that a date in figures had been altered from what was first written.

Cross-int. 53. Did you pursue the same course of analysis, as you call it, in that case which you have done in this, and testify at great length in relation to the same?

(Objected to as above and also assuming a fact not appearing on the record nor proved.)

Ans. The case was not susceptible of this sort of analysis; being, as far as I remember, the alteration of one or two (I don't remember which) figures. I have not in my mind exactly the amount of space covered by the change made on the book; nor have I any recollection of my method of procedure farther than that I illustrated it by a diagram; nor do I remember taking any notes on the subject, or having any whatever.

755 The question and its circumstances would scarcely permit of a very extended examination, had it not have been for the ridicule and efforts of counsel in the cross-examination, in placing my judgment upon it against the testimony of interested persons, who, if I recollect right, swore that the seeming alteration was accidental, or accounted for it in some other way.

Cross-int. 54. Had you not various other papers, besides the one in controversy in that case, put into your hands to enable you to form a judgment; and did you not produce various photographs to support your judgment?

(Objected to as above.)

Ans. I produced various photographs, and recollect that the book in which the alteration was was very small, if I recollect aright. I have no means of recalling at this moment any particulars as to standards, except that in this small pass-book (I think it was.) I must presume that there was other writing and figures with which to institute comparisons, as the question, I think, related only to an alteration by the same hand that usually wrote in the book. I cannot now recall that there was any question as to hand, but as to an alteration or writing over of the same hand. Records and papers may doubtless be found that would represent the whole thing exactly. My memory of the case relates only to the fact that I was engaged in it; that it was an alteration; that the case was decided against the counsel that employed me. [And that one of the jurors afterwards came to me and stated that he and several of his comrades believed my judgment correct, but that they chose on a second trial in the superior court, I think, on a question of $100, to give the party opposed to the counsel that employed me, the case; feeling conscientiously justified on his swearing—the man who was supposed to have made the alteration—that it was a straightforward transaction.] Separate from these generalities, I would not attempt to now state, because I do not remember.

(Complainant objects to clause in brackets as impertinent and irresponsive.)

Cross-int. 55. Did you testify on that occasion that you were as sure that the figures had been written over or touched as that you were a witness on the stand, or to that effect?

(Objected to as above.)

756 Ans. I cannot recall any particular statement, not having any minutes, photographs, or diagrams of the matter. I can only say that I now believe that what I then stated must have been correct.

Cross-int. 56. Did you distinctly swear that it was a case of forgery or alteration, or did you leave it in doubt?

(Objected to, as above.)

Ans. I can only say that I must, in my mind at the time, have had no doubt, as I do not remember ever to have been sworn upon a question of handwriting where I had any doubt.

(Respondents object to the answer as irresponsive.)

Cross-int. 57. Whether or not immediately you left the stand in that case, there was a pass-book containing original entries of the same transaction, produced and put on evidence?

(Objected to as above.)

Ans. I have no recollection of any such, and believe now that when I left the stand I immediately left to take the cars for Boston before any other testimony was produced.

Cross-int. 58. Was any expert called after you left the stand?

(Objected to as above, and as opening on cross-examination matter not opened in chief.)

Ans. I do not now know whether before or after, but I feel sure another expert was there, but have no further recollection about it.

Cross-int. 59. Who was that other expert?

(Objected to as above.)

Ans. A. R. Dunton, the writing-master.

Cross-int. 60. Were you called as a witness in the Fairchild trial before referees Judge Chapman and Samuel Hoar?

Ans. I was not.

Cross-int. 61. Will you state the names of the persons in Boston and its vicinity who are deemed or called experts in this matter? Name all you can.

(Objected to for form, substance, and as impertinent.)

Ans. I can only answer as to that, the names of persons who have been on the witness stand, or employed one side or the other, in cases when I have been employed. Whether they are deemed experts, or deem themselves experts, I should not be willing to say.

757 I have seen Geo. N. Comer on the stand twice or more; Mr. Henry Williams twice or more, a Mr. Dunton, brother to the former one, who is now teaching in the city, once certainly; Mr. Davis, the broker, I think Wm. T. I cannot now recall any other names. There are several from State street, but I don't remember their names. I presume a name might be suggested to me.

Cross-int. 62. Have you and Mr. Comer been called as witnesses on opposite sides in cases of supposed forgery, and in how many instances?

(Objected to as above.)

Ans. I now recollect but two, and in one instance he did not testify, but left the court-house, stating to me that it was too evident that he should not agree with the party who had employed him,

or should agree with the party that employed me. I don't recollect which expression he used.

Cross-int. 63. Name both of those cases.

(Objected to as above.)

Ans. One of them was the case of Hewins and Parker; the other between Mr. Marcy and Mr. Barnes, in Worcester county.

Cross-int. 64. Did you not differ also in the case of Howe vs. Thompson—a case of forgery— before Mr. Hillard?

(Objected to as above.)

Ans. I have now no remembrance of Mr. Comer's being in that case at all.

Cross-int. 65. You were called to testify that it was a forgery, were you not?

(Objected to as above.)

I testified to alterations in writing, or forgeries, the particulars of which I cannot now recall.

Cross-int. 66. Before you gave your opinion to the parties who employed you in this case, you inquired, did you not, as to the age of Miss Howland, whether she suffered from nervous affections, and wrote with difficulty or ease?

Ans. I never made any such inquiry. [Never knew anything of the papers which were laid before me till they were spread and opened; no name of any party interested in the case, either as counsel or otherwise; selected the paper No. 10 first from two or three others; selected No. 1 afterwards; laid them together, examined them with a glass, superimposed them as transparencies, and
758 looked at them in every point in the two signatures, from beginning to end; then stated to the gentleman who brought me to the clerk's room that signature No. 10 was traced, copied, and made from signature No. 1, without going, as I remember, in an opinion any farther. In my own mind I had seen that some of the other signatures were by the same hand as No. 1; but had not then settled in my mind whether the writer of No. 1 signature did not make also No. 10 signature. The examination as a whole was a hurried one, without design that it should at that time be extended; and opportunity was not afforded me to go into a detailed examination from the fact that a gentleman stepped into the room and interrupted it. As I saw that he had some connection with the gentleman who introduced me, and supposing it to be in reference to the same matter, I left the room.]

(Complainant's counsel object to clause in brackets as irresponsive.)

Cross-int. 67. You have at no time been told by those who employ you, have you, that the nervous condition of Miss Howland was at times such that it took her a long time to make her signature; that at times she was obliged to make her mark, and at times to retouch her letters, or anything to that effect?

(Objected to as leading in form, assuming facts not proved, and immaterial in substance.)

Ans. I never heard any remark whatever, from any person living,

and knew nothing of her more than I may have seen in newspapers, her condition, age, or habits of hand, or anything in reference to them, until after I had written out at length my notes on all the papers that I have named. I myself found the writing over of letters and words in the signature, in twenty or more different signatures of Sylvia Ann Howland, in the standards, noting the place and number and particular letter, describing in my notes each particular signature, in its writing over and forms, not one having any purpose in its expression but legibility. I never was told anything like what is stated in the question by anybody, at any time.

Cross-int. 68. Who, if any one, first told you that the body of either of the exhibits marked F. W. P., No. 1 to 15, inclusive, was in the handwriting of the complainant, and when were you so told?

Ans. No remark was ever made to me about the handwriting in the filling out of any of the papers which I have been examin-
759 ing, or any intimation given as to their author, until I had taken my notes and made diagrams, and shown them to those who employed me. There were two, three, or four persons in the room. By some one, I am not sure whether one of the counsel or not, disapprobation was expressed of introducing other comparisons of hand, except the signatures. I then stated, I think, if not then soon after, that the proof connecting Signatures 10 and 15 with the handwriting of the filling of Nos. 1, 10, 15 was as strong as the proof, in my mind, that the signatures in 10 and 15 were not written by the hand that wrote the standard exhibits. Some one, I think one of the counsel, stated that the handwriting in the filling of Nos. 1, 10, and 15 either was, or was supposed to be, the handwriting of Miss Robinson. Two gentlemen then, one of them one of the counsel, in their conversation, conveyed to me very strongly the idea that that kind of testimony would not be gone into at all.

I made the analysis, as I usually do, of all the writing presented to me of this filling out, independent of the other, and left it to answer or not as called upon.

(Complainant objects to all the answer which states anything other than who first told him that the body of either of the exhibits inquired about was in the handwriting of the complainant.)

Cross-int. 69. Will you please confine yourself to a direct answer to the question, and state who, if any one, first told you that the body of either of the exhibits referred to was in the handwriting of the complainant, Miss Robinson?

Ans. I received my information in the conversation last alluded to, in the course of it between Mr. Eliot and Mr. Mandell, or Judge Thomas and Mr. Mandell, without its being directed to me personally, that I remember.

Cross-int. 70. The question is not how you first received the information, but who, if any one, first told you?

Ans. That is the way I received it. I know of no other way to answer the question. I do not know that any one of them addressed any of the conversation to me particularly.

Cross-int. 71. Do you mean to say that you do not understand the

question, which asks you who first told you, if any one, that the handwriting in the body of these exhibits was Miss Robinson's?

Ans. I mean to say that I obtained my information in the
760 room with gentlemen whom I supposed were in serious conversation with each other, and would state only facts, by hearing them remark on the subject, after I had examined the papers. No one has ever stated, for the purpose of giving me any information particularly, that I remember, respecting the filling out; but, after this conversation, in that sort which occurs between counsel and witness, wherever there has been any intimation or allusion to the subject, the filling out of Nos. 1, 10, and 15 have been alluded to as Miss Robinson's handwriting; and in one or more of these papers, (1, 10, 15,) I have heard it stated that they were either hers, or supposed to be hers; to the filling of the other papers I do not remember ever having any word or allusion made, although there may have been to some of them.

Cross-int. 72. You say that no one ever made any statement concerning the filling out of the papers referred to by you in your last answer, for the purpose of giving you any information in particular about them. What did they state their purpose to be by which you knew this?

Ans. The allusion made to them was on account of my own statements and diagrams; and the conversation between the counsel, or one of them, and Mr. Mandell conveyed the idea to me that the purpose of the statement, or allusion to the author of the writing in Nos. 1 and 10, was to discourage or prevent me from dwelling upon that point—that is, comparison of hand of the signatures 10 and 15 with the filling of 1, 10, and 15.

Cross-int. 73. What was the conversation you refer to? State as nearly as you can the words, and where you cannot give the words give the substance.

(Objected to as immaterial.)

Ans. I do not recollect the words; the substance I have given; that is, that on showing them my demonstrations or diagrams there was a manifestation of disapprobation by Mr. Mandell, and, I think, Mr. Eliot; the conversation was between themselves, and I only remember generally, as I overheard it, that it belonged to this subject.

Cross-int. 74. What did Mr. Mandell say to you, or any one in the room, in discouragement of your dwelling upon that point?

Ans. He did not say anything directed to me that I remember.
His conversation with Mr. Eliot gave me the impression that
761 he thought in the judgment of handwriting it was signatures, rather than anything else, that were to be used as standards.

Cross-int. 75. Was that acquiesced in, so that you understood you were to confine your attention to signatures?

Ans. There was no acquiescence expressed to me in any direct or indirect manner, except this impression which I received from this conversation.

Cross-int. 76. And do you mean to say that the only information you ever received, that the bodies of either of the exhibits F. W. P.,

from No. 1 to No. 15, inclusive, was in the handwriting of the complainant, is that which you have stated in the interview in which Mr. Mandell and Mr. Eliot were present, referred to in your last answer? I mean to limit the inquiry to the time before the taking of your deposition.

Ans. I have not received it for any purpose of giving me information, but it has been tacitly admitted by Judge Thomas or Mr. Eliot in our interviews.

Cross-int. 77. When they have referred to either of these exhibits from 1 to 15, before you, have they stated to you that it was not for the purpose of giving you any information in whose handwriting they were?

Ans. I can, in this matter, only give general ideas respecting it, and have answered that question positively, as they have made no direct statements to me on the subject that I remember, and what I learned from them I overheard between Mr. Mandell and Mr. Eliot.

Cross-int. 78. In what you overheard did either of them, in substance, say, or did either of them, in any and what way, by their action, intimate that this was not intended to be heard by you or was not for your information?

Ans. They were conversing together, and, judging from what I can now remember of appearances, I should be unable to say anything about their motive or purpose, farther than that if they intended to affect me, they would have addressed me particularly.

Cross-int. 79. Where was it that you then were, and who were in the room with you?

Ans. At Judge Thomas's office, 31 Washington street. Judge Thomas, Mr. Eliot, and Mr. Mandell, and, I think, one other, whom I do not remember.

762 Cross-int. 80. The conversation you have referred to was between Mr. Mandell and Mr. Eliot in relation to discouraging you from dwelling on the point referred to, was it?

(Objected to as assuming a fact not proved, and as impertinent.)

Ans. I had no conversation with Mr. Mandell that I remember.

Cross-int. 81. Will you please answer the last question, which does not call for any conversation with you?

Ans. I received my impression from a conversation between those two, or from their appearance. I cannot now define how I received it, but am satisfied that in some way I did receive such an impression.

Cross-int. 82. Were only the exhibits No. 1, 10, and 15, of those marked F. W. P., from 1 to 15, inclusive, present at the interview referred to in the answer to the seventy-ninth cross-interrogatory?

(Objected to as assuming a fact not proved.)

Ans. I have no recollection that there were any exhibits present at all, and do not now remember ever seeing those exhibits Nos. 1, 10, and 15, or any paper here before me, but on one day, at Judge Thomas's office, and that, the day that Mr. Thaxter came in and went out with me. I cannot state whether that was this day or not.

Cross-int. 83. Do you mean to say that Mr. Thaxter came in with you?

Ans. No, sir. I said Mr. Thaxter came in there, and went out with Mr. Olney and myself, to go to the photograph room.

Cross-int. 84. Is Mr. Olney with Jugge Thomas, and did Mr. Thaxter go with you while you were making photographs for the counsel for respondents?

Ans. He is in the office with him. Mr. Thaxter went with me on the day I saw the exhibits at Judge Thomas's office. I do not recollect seeing the exhibits at his office any other time.

Cross-int. 85. At that time, had those exhibits—1, 10, 15—the marks on them of F. W. P., 1, 10, and 15, respectively?

Ans. I remember these marks upon the photographs. They must have been there.

Cross-int. 86. When you were present at the interview between Mr. Mandell and Mr. Eliot, referred to by you in your answer to the seventy-ninth cross-interrogatory, had you seen anywhere either of the exhibits, from No. 1 to 15, inclusive, other than 1, 10, and 15?

763 (Objected to as assuming the fact that witness had seen 15 at that time.)

Ans. I think I saw Mr. Mandell there previous to the day when Mr. Thaxter came in, and I think I had not then seen 15. I have not now the means of fixing the dates. I had seen in the clerk's office before this, when the papers were first shown me, so as to glance over some of them, and so as to mark in my mind and remember some of them, some of these exhibits, between Nos. 1 and 16 or 17, inclusive.

Cross-int. 87. When was this, with reference to your employment in this case, that you saw these papers at the clerk's office?

Ans. It was the Thursday or Friday nearest the 15th of August. It was the first time I was employed or called on in the matter.

Cross-int. 88. Can you now state which of these exhibits F. W. P., 1 to 15, you had seen before the interview at Judge Thomas's office, at which Mr. Mandell and Mr. Eliot were present, to which you have referred?

Ans. Nos. 1, 2, and 10 are the only ones I now recollect seeing that day in the clerk's office at my first employment. I do not recollect seeing any others, except those three, until I saw those at Mr. Palfrey's, except I think I saw 15 at Judge Thomas's office before I went to Mr. Palfrey's. I recollect now that I did see 15 at Judge Thomas's office before seeing it at Mr. Palfrey's office.

Cross-int. 89. At the interview at Judge Thomas's office, which you have referred to in answer to seventy-ninth cross-interrogatory, did you take no part in the conversation between Mr. Mandell and Mr. Eliot?

Ans. I do not remember any conversation in particular. I have an impression that there was conversation. I do not remember whether I took any part in it; probably I did; but I do not remember anything that I said, or anything that was said to me.

Cross-int. 90. Where were you when you were first applied to by

any one to be employed to examine any of the papers in this case, and by whom were you first spoken to?

Ans. At my office, 23 Hanover street, by one whom I now know as Mr. Stetson; he was a stranger to me.

Cross-int. 91. What did he say to you when he first applied to you? (Objected to for form and substance.)

Ans. He inquired my name, and whether I was the Mr. Southworth who sometimes examined handwriting.

764 Cross-int. 92. Did he say anything at that time on the subjects of forgery, or your examining handwriting with reference to its genuineness?

Ans. He asked me if I was the gentleman who examined handwriting, or something to that effect; I do not recollect the language.

Cross-int. 93. And that was all that he said at that time on the subject of handwriting, was it?

Ans. I do not remember that he said anything in particular. I took out some diagrams that I had in my possession, and showed them to him. I interested him in them a little while, and he asked me if I would go to the clerk's office and examine some papers, and I did.

Cross-int. 94. Were the diagrams which you then shew him some which you had taken to establish or to illustrate some case of forgery?

Ans. They were such as I had made in a case of questioned handwriting, which has never come into any court, upon which I have never been sworn and questioned.

Cross-int. 95. Will you please answer the question, and state for what purpose they were taken?

Ans. The case was a private one thus far. It is a case of suspected forgery by some parties. I do not wish to express an opinion to go into print about it.

Cross-int. 96. Without asking for the names of the parties, were these diagrams taken for parties who were suspicious of forgery?

Ans. They were; and I have no doubt but what those parties know it to be so.

Cross-int. 97. In any case where you have been examined or employed as an expert in regard to the genuineness of handwriting, have you ever made a bargain or agreed beforehand as to the amount of compensation you were to receive?

Ans. I think I have.

Cross-int. 98. In more than one case?

Ans. No doubt, I have many times; small cases are often presented to me, and parties desire to know the fee.

Adjourned to 9½ a. m., Saturday, Sept. 29, 1866.

765 SATURDAY, *Sept.* 29, 1866.

Direct resumed:

(The direct examination is here resumed by respondents.)

Int. 10. Will you state whether or not you have been called on and your services desired in other cases than this by the counsel for complainant; and, if so, by which of them?

(Objected to as not in answer to any cross-examination.)

Ans. I have not been called upon by any counsel that I know of on the opposite side in other cases, but have answered questions to them as counsel in a case on the witness stand; I refer to Mr. Bartlett.

Int. 11. In the case referred to, state whether or not your services were employed by the party for whom Mr. Bartlett was acting.

(Objected to as above and as immaterial.)

Ans. The junior counsel with Mr. Bartlett called on me and made all the arrangements, so far as I remember.

Int. 12. State whether or not you have been called on in reference to this case by either of the counsel for the complainant, or applied to by either of them; and, if so, state when and by whom.

Ans. I was called upon after I had seen Mr. Stetson and Judge Thomas, or after they had called upon me, by Mr. Bartlett. I can't say applied to, strictly speaking. I was asked whether I had been applied to, or given an opinion in the case, or both questions.

Int. 13. State whether or not anything has been said, and, if so, what, to you as to compensation in this case.

Ans. No remark has been made by any one having allusion to compensation, reward, or satisfaction in any manner whatever.

Adjourned to Monday, Oct. 1, at 10 a. m.

MONDAY, *Oct.* 1.

Direct examination resumed:

Int. 14. Whether or not did Mr. Bartlett say anything to you about his confidence, or otherwise, in your opinion about matters concerning handwriting; and, if so, state what?

766 (Counsel for complainant objects to the question as incompetent and impertinent.)

Ans. He said he had a great deal of confidence in my opinion in regard to handwriting.

(The deposition having been read over to the witness, he now desires to answer as promised, in answer to the thirtieth cross-interrogatory, that he has counted the pages and they amount to about fifty-five; and also to qualify the answer to the eighty-second cross-interrogatory, by saying that it had slipped his mind at the time; that he had seen some standards of Sylvia Ann Howland's handwriting, Exhibits R. C. P., 50 and 51, and some of the bills of sale, several times, at Judge Thomas's office; also, witness adds, "that upon my referring to my notes I find that I had seen some of the original exhibits, F. W. P., two or three times at Judge Thomas's office.")

ALBERT S. SOUTHWORTH.

767 SATURDAY, *Sept.* 29, 1866.

Deposition of John E. Williams.

I, John E. Williams, of Irvington, in the State of New York, aged sixty-two years, on oath depose and say: I am the president of the Metropolitan National Bank of New York city. I have held the position of president from ten to twelve years; before that was vice-

president two years, and was cashier one or two years before. I have been connected with the bank since its organization in 1851. Before that I was seven years and more cashier of the City Bank, Boston. Before that I was bank commissioner of Massachusetts a part of a year, and until the law providing for such an office was repealed. Previous to that I was cashier of the Life and Trust Company of Florida, a banking company in that State, for some two years; previous to that cashier of the Marine Bank in New Bedford for some six or seven years; and previous to that was cashier of the Newport Bank, in Newport, R. I., some five years, and was a clerk there one or two years before.

Interrogatories by respondents:

Int. 1. State whether or not, during your connection with these banks, it has or has not been your habit to examine handwriting; and, if so, state the facts.

Ans. While clerk and cashier, acting as teller as well as cashier, it was a part of my business to examine signatures and handwriting directly. As president, vice-president, and cashier in New York, any questions in regard to writing are submitted to me by the tellers. [Such questions are frequent in New York.]

(Clause in brackets objected to as incompetent.)

Int. 2. State whether or not you have been in the habit, to any extent, and, if so, to what, of studying signatures and handwriting independent of your business in the bank? State the facts.

768 Ans. I have been in the habit for many years, thirty certainly, when looking over my dividend books, to think of the signatures of persons I knew, in connection with their known characters—not expressly making it a study.

(Counsel for respondents here place in the hands of witness, exhibits marked R. C. P., 1 to 30, inclusive, and R. C. P., 32 to 49, inclusive; also exhibits marked F. W. P., 1; also R. C. P., 50, and R. C. P., 51; also F. W. P., 10, and F. W. P., 15, and then puts the following question:)

Int. 3. State whether or not you have made examination of the signatures of these papers now submitted to you, and, if so, state whether the signatures to exhibits marked F. W. P., 10, and F. W. P., 15, are or not genuine?

(Objected to by complainant on the ground that the witness is not qualified as an expert, and also the question not warranted by the state of the pleadings, and notice given that any cross-examination of this witness will be de bene esse, and reserving these objections.)

Ans. I believe I have examined them all. I have come to the conclusion that signatures to F. W. P., 10, and F. W. P., 15, are not genuine.

Int. 4. Now state, if you please, the reasons that have brought you to that conclusion.

(Objected to as above.)

Ans. Starting with the conviction that the signatures to F. W. P., 1, and the bills of sale are genuine, I come to the conclusion that the

signatures to 10 and 15 are spurious; for the reasons that one of these, No. 10, bears, in many respects, a too general likeness to the signature of No. 1, with, however, particular variations from that which show its spuriousness, and the same remark is applicable to No. 15, excepting that the general resemblance is less marked. I find in examining Miss Howland's signatures in the bills of sale, and to F. W. P., 1, especially the bills of sale, that her habit was to loop the bottom part of S and y. The S in No. 1 stops, apparently, as if made by the catch of a steel pen; the y, however, is looped in part. I find the i in the admitted signatures runs on to the first part of the a and forms a loop at the top invariably; that is not the case with the a on No. 10—the i stops at the body of the o, and the top is begun in the middle of the letter, and not brought from the i. I
769 find the A in 10 quite unlike any A in the fifty odd signatures which I have examined. The thick part in the A's in her signature is made with one stroke. The A in No. 10 is made differently. It is not only not one continuous stroke from the top to the bottom, but the first part, about one-third of the length, is clearly composed of two strokes where they terminate, forming a shoulder, thence carried to the bottom of the A. Another peculiarity of this letter A (No. 10) is that the union between the thick and thin part of the A is formed differently from what it is in any signature which I have seen of Miss Howland's. I was at a loss to account for this, having become satisfied that this signature was fabricated in imitation of signature to No. 1, until I placed the signature of No. 1 against the window. I then saw that the loop at the bottom of the A formed a circle between the thin and the thick part of A; and, holding a paper on that, you would see what seemed to you a circle merely at the bottom of A—the fine strokes lapping over on to the thin part of A, becoming partly obscured in looking through a medium so dense as paper. It then occurred to me that one tracing that signature would make precisely what is made on No. 10, as the most natural way of forming that o or circle. This Miss Howland has not done in any signature that I have seen; but, on the contrary, has crossed her A's with a looped mark curving over the thin part of the A, so high up as to bring the hair-line of the next letter, n, more nearly horizontal to the place of writing, while this hair-line starts from near the bottom of the thick part of A. In reference to the H I would say that it is more boldly and strongly made in No. 10 than Miss Howland usually made that letter. With reference to the connection between the o and w in Howland, that also is more vigorously made in No. 10, and less bent than was Miss Howland's practice. The w also is too strongly and too well made, and the connection between the w and l has the same objection—it is too strong and too straight, and has more of the characteristics of the writing in the body of the papers to which the signatures are affixed. After finding that I could account for the ungenuineness of A, by laying the one over the other—one signature, the signature of No. 10 over 1, or 1 over 10—I became perfectly satisfied that it was traced. The signature of No. 10 was traced from that of No. 1. I tried No. 15 with like result.

The A in No. 15 signature has the same unreality, ungenuine-
770 ness, of the A in No. 10; while the formation of the letter, as a whole, is done by the most marked tremulous stroke. This is true likewise of the letter H in No. 15. The tracing here is palpable. The cross-line between first and second part of H trembles from beginning to end. The first or thick part of the H is made very thin—much too thin for Miss Howland's signature; and that from the beginning of the loop down to the bottom is tremulous. The o and the w, and the w and l, in Howland, is connected in the same ungenuine way. The final stroke on the d is plainly seen to tremble from the top to the turn. When I remembered that I never saw two signatures precisely alike—and of my own signature, which is said to be uncommonly uniform, I have not been able to find more than one in ten of the same length—I was struck with the fact that here were three of the same length. And, too, when on examining Miss Howland's signatures to these bills of sale, I found her S's and y's made with a loop in so many instances, and only one in those fifty with an abrupt termination, I was struck with finding three, not only with blunt ends to the S's, but two of them with blunt ends to the y's—those two which I conclude are not genuine. If I am right in the statement that they have been traced, any one can satisfy himself by holding the signature of No. 1 and No. 10 to the glass, as to whether the thin or hair-stroke of the y in No. 1 would have been readily perceived in looking through writing paper. If not, that may account for the abrupt termination of the y in 10 and 15.

Int. 5. You have spoken of the tremulousness which you have observed in the signatures to Nos. 10 and 15. State whether you observed any tremulousness in the signatures to the bills of sale or to the exhibits 50 and 51. If so, describe it.

(Complainant objects as above and for form.)

Ans. I observed in several signatures of bills of sale evidence of nervous agitation, but nowhere that peculiar tremulousness.

Int. 6. Have you or not superimposed the signatures to F. W. P., 10, and F. W. P., 15, over the signatures to F. W.P., 1? If so, state how, if at all, the signatures matched or covered each other, or how otherwise.

(Objected to as above.)

Ans. I have done so. They matched each other with great exactness, barring the exceptions which I have named, especially in the A.

Int. 7. State whether or not, in your judgment and accord-
771 ing to your knowledge, it would be practicable for any one to write his ordinary signature twice in such way that the signatures would cover each other as these exhibits you have stated do.

(Objected to as above.)

Ans. In my judgment, in the ordinary mode of making signatures, I should say it was next to impossible.

Int. 8. State, if you please, the degree of confidence you have in the conclusion you have stated that these signatures to 10 and 15 are not genuine.

(Objected to as above.)

Ans. I am very sorry to be obliged to say that I have no doubt whatever of the correctness of the conclusion to which I have come.

Int. 9. Whether or not have you heard the testimony in this case given by A. S. Southworth?

Ans. I have not. I have come to my own conclusions from my own examinations, and before I suspected any tracing.

(The cross-examination which follows is stated by S. Bartlett, esq., of counsel for complainant, to be de bene esse, and without waiver of any objections heretofore taken.

Respondents do not admit the right of complainant to so examine.)

Cross-int. 1. Have you heard anything said about Mr. Southworth's testimony?

Ans. I heard none of his testimony. I carefully avoided knowing anything of it. Mr. Stetson told me he would tell me of it when it was proper.

Cross-int. 2. Do you mean to say that you have never heard any one say whether Mr. Southworth had or had not formed or expressed any opinion as to these signatures?

Ans. What I do mean to say is, that I formed my own opinion as to these signatures before hearing anything of Mr. Southworth. I may have heard since what his opinion was, but it did not bias me at all. I came to my own opinions.

Cross-int. 3. Have you ever seen Mr. Southworth to talk with him, and, if so, when?

Ans. I have never spoken to him, nor he to me.

Cross-int. 4. Was he ever present at any time when you were looking at either of the papers you have testified as to?

772 Ans. Never to my knowledge.

Cross-int. 5. In examining the signatures to the bills of sale, have you noticed any signatures of Miss Howland where any letters appear to have been retouched, and, if so, how many such letters did you notice?

Ans. I do not remember any letters retouched, but several letters were re-made—begun in one place and then begun in another.

Cross-int. 6. State what you mean in your last answer more fully, and how many letters you thus noticed, and state, without looking at the papers.

Ans. I did not count the instances, and can't say from recollection; but I now remember a case where the loop would have been left off the y had it not been amended and put on after the pen had once stopped.

Cross-int. 7. And is that the only instance you now recollect?

Ans. Unless it be the mending of the S in a similar way.

Cross-int. 8. How many instances do you remember of the latter?

Ans. I cannot recall the number, nor whether it was more than one.

Cross-int. 9. When and where did you first see the signature of Miss Howland to either of the papers handed to you by the respondents, and in regard to which you have here testified?

Ans. I never saw any of these papers till I came to Boston, day before yesterday.

Cross-int. 10. Who first said anything to you about looking at or examining these papers, or either of them?

Ans. Mr. Stetson, in New York, three or four weeks ago, at the Metropolitan Bank.

Cross-int. 11. Did he state to you then, or had you before that known, for whom he was acting?

Ans. I have no recollection of his stating for whom he was acting, but I had from newspapers or elsewhere an impression that he was acting in opposition to the claims of Miss Robinson.

Cross-int. 12. Will you fix, as nearly as you can, the date when he first called?

Ans. I should think it was four or five weeks ago instead of three or four. It was in August.

Cross-int. 13. Did any one come with him?

Ans. Not to my knowledge.

773 Cross-int. 14. Did he then state to you that there was to be any charge or allegation of forgery in this case, in which he was acting in opposition to Miss Robinson's claim?

Ans. So far as I remember, not until after I had satisfied myself from photographs and signatures which he laid before me of the ungenuineness of the signature in No. 10.

Cross-int. 15. Will you please answer the question previously put to you?

Ans. I have no objection to answering it again. I would repeat, that from an analysis of the signature and the letters, and a comparison with the signatures presented to me, I detected the fraudulent or fabricated signature, pointed it out, and gave my reasons why I thought it so. Then Mr. Stetson said, You have worked it all out. (Objected to as not responsive.) Nothing implicating anybody was said till I had formed my own opinion. (Objected to as not responsive.) I do not remember Mr. Stetson using the word forgery, or making that remark. [I should have been quite as likely to use it as he. He said, You have worked it all out.]

(Clause in brackets objected to as not responsive.)

Cross-int. 16. What signatures did Mr. Stetson at that time show you?

Ans. Signatures of Nos. 1 and 10, and five or six which I should think were from these bills of sale. No. 15 I never saw till day before yesterday.

Cross-int. 17. Do you mean to say that you saw these papers marked F. W. P., No. 1, and F. W. P., No. 10?

Ans. I have already stated that I never saw those papers till day before yesterday, and have also stated that I judged as to the genuineness of those signatures from photographs shown me in New York.

Cross-int. 18. What original papers do you now mean to say you had before you at that time in New York?

Ans. I don't mean to say that I had any.

Cross-int. 19. All of the signatures of Miss Howland that you then saw were not originals but photographs, were they?

Ans. Yes, sir.

Cross-int. 20. Were the photographs all in the same size, or were any of them magnified?

774 Ans. All that I judged from were in the same size, but subsequently larger ones were shown me.

Cross-int. 21. By subsequently, do you mean at the same interview?

Ans. Yes; after my opinion was made up and expressed.

Cross-int. 22. How long an examination did you make of the photographs first shown you, before the large ones were shown you?

Ans. It may have been an hour and a half or two hours; it was a very careful analysis.

Cross-int. 23. Before this you had heard of this controversy in which your testimony is now being taken, had you not?

Ans. I had heard of the contesting of the will of Miss Howland, as who hadn't? I had heard nothing about the handwriting question, except that what purported to be an appendage or contract to Miss Howland's will was in Miss Robinson's handwriting.

Cross-int. 24. Is it not the fact that you knew, or supposed, when Mr. Stetson placed these photographs in your hand, in New York, as you have stated, that his purpose was to prove the falsity of some one of the signatures?

Ans. I certainly did not know any such thing at the time he placed them in my hands, but I had good reason to believe it before he left me.

Cross-int. 25. But nothing that he had said, nor the fact that he placed photographic signatures for you to examine, caused you then to think that his purpose was to show the falsity of either of the signatures, did they?

Ans. When the signatures were shown to me for examination it was done, as I have stated, without any expression of opinion on his part; but of course the act awakened suspicions of wrong in my own mind, as it would if my teller had shown me half a dozen checks, and asked me to examine them.

Cross-int. 26. How long was Mr. Stetson with you at this time?

Ans. Perhaps three hours.

Cross-int. 27. Before that time, had he or any one said anything to you about his or any one coming to you in this matter?

Ans. No intimation of business, but only a telegram the day before from him or Mr. Eliot, asking if I should be in the city the following day.

775 Cross-int. 28. Before, you say, you had made an examination of these photographs, and come to a conclusion respecting them, had Mr. Stetson or any one stated to you any circumstances as to the condition of the party whose signatures they purported to be at the time when they were made, or at any time?

Ans. No, sir.

Cross-int. 29. Were you acquainted with Sylvia Ann Howland before her decease, and, if so, how recently had you seen her?

Ans. A great many years ago, before her sister was married to

Mr. Robinson. Upwards of thirty years ago I knew the two Miss Howlands, but I have not known Miss Sylvia Howland for many years, and it is many years since I have seen her. I cannot recall her looks.

Cross-int. 30. Before you had examined those photographs and come to a conclusion from them, as you have stated, had Mr. Stetson or any one told you that the nervous condition of Miss Sylvia Ann Howland was at times such that it took her a long time to make her signature; that at times she was obliged to make her mark, and at times to retouch her letters, or anything to that effect?

(Objected to as assuming facts not proved.)

Ans. No, sir.

Cross-int. 31. When did you ever first live in New Bedford?

Ans. Sixth of June, 1832.

Cross-int. 32. How many years did you remain there; and how many years have you lived there in all; and how intimate have been your relations with New Bedford people since, down to the present time?

(Respondents object to the last clause of question as immaterial.)

Ans. I lived there from 1832 to 1843, going six months in two of those years respectively to Florida. While I lived in Boston from 1843 to 1851, I went to New Bedford as often as once a month. My relations with New Bedford people are intimate and friendly.

Cross-int. 33. Have you had more or less business transactions with Mr. Thomas Mandell and his son Edward D. Mandell at any time since you first went to New Bedford?

Ans. I have not had strictly business transactions with Mr. Thomas Mandell. My business with him has been to get money out of him for charitable purposes, and I have done a pretty large trade
776 at that. I have had no business relations at any time with Mr. Edward D. Mandell.

Cross-int. 34. Did you ever marry a New Bedford lady?

(Objected to as immaterial.)

Ans. Twice.

Cross-int. 35. Have you heard that in the will of Miss Sylvia Ann Howland which has been probated that there were any persons who are legatees with whom you are on terms of intimacy at New Bedford?

Ans. Yes, sir. I heard Cousin Sally Russell has a legacy. We all call her cousin, though she is no relation. I have been intimate with her these thirty years. Dr. Gordon also, who I know very well, though he has moved to New Bedford since I left. I dare say I should know some other of the legatees, but I don't remember them now.

Cross-int. 36. When, after this interview with Mr. Stetson in New York about which you have testified, was your attention next called to the subject of these signatures, and by whom?

Ans. By Mr. Olney; about a fortnight afterwards, in his office in Boston. It is also Judge Thomas's office. I went there by appointment, expecting this examination. I only met Mr. Olney there.

Cross-int. 37. When and whom did you next see?

Ans. These gentlemen; at this examination, last Thursday.

Cross-int. 38. Have you, since you saw Mr. Olney, as you have stated, seen any of the gentlemen referred to by you in your last answer to converse with them about this case?

Ans. Not until Thursday last—day before yesterday.

Cross-int. 39. Did you have conversation with them, or any of them, then or since, in relation to the case, excepting such as you may have had, if any, in the room while and where the examination was going on?

Ans. There has been no discussion. Remarks have been made by them and by me. I have been out of this room while the testimony has been taken, and, of course, I mean this answer to apply to remarks outside of this room.

Cross-int. 40. When and with whom were these remarks made?

Ans. With Mr. Eliot and Mr. Stetson, a few words at different times in and out this building—in the room below, where I examined the original papers.

Cross-int. 41. When and how long were you in the room below with the original papers?

777 Ans. I was in the room below the clerk's office. I examined the papers marked F. W. P., 1 to 15, on Thursday.

Cross-int. 42. By appointment with whom did you go to Mr. Olney's office, as you have stated?

Ans. A letter was received from Mr. Eliot.

Cross-int. 43. Is your present visit to Boston in order to enable your testimony to be taken at this time?

Ans. Yes, sir.

Cross-int. 44. Have you been paid anything for the trouble you have been at at any time in making the examination of the paper and in coming here, as you have stated; or are you to receive anything for this?

Ans. I have been paid nothing except $1 60 on subpœna fee. That was yesterday or day before, down below, by the officer in the clerk's office. I don't know that I am to receive anything, but I hope I am, for I am something out of pocket. Whether I receive anything or not, I shall give the same testimony.

Cross-int. 45. Has your present stay here been in any way inconvenient to you by reason of your business in New York; and have you, or the counsel employed by respondents, expressed a desire to expedite your testimony in consequence of the inconvenience of your absence?

Ans. It has been only inconvenient as it would be to any man away from his business and his family. Counsel have expressed desire to facilitate taking of my deposition.

Cross-int. 46. Have you stated, in your direct examination, all the peculiarities which you noticed in the signatures to F. W. P., 10, and F. W. P., 15, which lead you to pronounce them not genuine?

Ans. I have stated all that I remembered; but there is an indefinable, inexplicable something about counterfeits or forgeries which convey a decided impression to the mind of one accustomed to such examinations, and which goes far towards consolidating his opinion.

Cross-int. 47. When you were shown the photographs, as you have stated, in New York, did you have the curiosity to ask by whom they were made?

Ans. No, sir; [but since I have been here, I have compared them with the originals, and think them well made.]

(Clause in brackets objected to as irresponsive.)

778 Cross-int. 48. Did you, at that time, have the curiosity to ask Mr. Stetson if anybody else had examined these signatures?

Ans. No, sir.

Cross-int. 49. And nothing was said by you or him at this time as to who took these photographs, or as to the opinion of the photographer or any one else as to the genuineness of the signature?

Ans. Mr. Stetson may have said who took them. I did not ask. If he did, it came with no force to my mind, as I had never heard of him as an expert, although I had heard the name of Southworth as a photographer. Nothing was stated as to the opinion of any one before I gave mine. After that, I cannot recall what was said, but I know the impression left on my mind was, that the photographer had pronounced the signature not genuine.

JOHN E. WILLIAMS.

779 MONDAY, *Oct.* 1, 1866.

Deposition of Joseph E Paine.

I, Joseph E. Paine, of Brooklyn, New York, aged forty-eight years, on oath say: That I am an accountant or book-keeper, and now with A. A. Low & Brothers. I have been with them some ten years, and have been an accountant some thirty years.

(And being examined by counsel for respondents further upon interrogations, as follows:)

Int. 1. State whether or not you have taken interest in or devoted time to the study of penmanship in any of its branches; and, if so, for what period of time and in what way?

Ans. I have been in the habit of doing a good deal of ornamental penmanship since I was fifteen or sixteen years of age. I have been also in the habit of writing a great deal since I have been an accountant.

Int. 2. State what attentions, if any, you have given, that would enable you to judge as to the power of penmanship and its character.

Ans. I have been in the habit of copying portraits, engraved portraits with the pen, letters in print, commonly known as copying print—in short, all that variety of work usually known as ornamental penmanship. I would merely add that I have not followed this as a business.

Int. 3. State whether or not you have had occasion to examine signatures in connection with suits pending in court, and other matters of controverted signature; and, if so, to what extent.

(Objected to as to form.)

Ans. I have had frequent occasions, within the last two years, to examine signatures supposed to be simulated. I should say to the extent of eight or ten cases in that time.

Int. 4. State whether or not these examinations that you made as expert have been part of your regular business, or how otherwise.

(Objected to for form, as assuming a fact not proved.)

Ans. It has been no part of my regular business; simply incidental.

780 Int. 5. State whether or not you were a witness in the case of the United States against Hunter, in New York.

(Objected to for form and substance.)

Ans. I was.

Int. 6. Are you or not the Joseph E. Paine mentioned in the report of that case as having prepared the signature of Mr. Cisco, the United States Treasurer, which he testified to as his own?

(Objected to for form, assuming a fact not proved, and as otherwise incompetent.

Upon objection the respondents' counsel waive the question.

Counsel for respondents put into the hands of witness original Exhibits F. W. P., No. 1, and Exhibits R. C. P., 1 to 30, and R. C. P., 32 to 49, inclusive, and R. C. P., 50, and R. C. P. 51; also exhibits marked F. W. P., 10, and F. W. P., 15, and put the following question:)

Int. 7. State whether or not you have made an examination and comparison of the papers put into your hands, and of the signatures thereto; and whether or not you have formed any opinion or conclusion as to the genuineness of the signatures to papers marked F. W. P., 10, and F. W. P., 15; and, if so, what is that opinion or conclusion?

(Objected to on the ground that in the state of the pleadings in this case the question is not open to the respondents; also, because it does not appear that the witness is an expert in relation to the matters inquired about, and because the question is leading and otherwise incompetent, and the complainant gives notice that any cross-examination of this witness on the subject of this inquiry will be de bene esse, and without waiving her objections.)

Ans. I have examined all these papers. I have formed a conclusion as to the genuineness of signatures to F. W. P., No. 10, and F. W. P., No. 15. My conclusion is that the signatures of Sylvia Ann Howland to papers 10 and 15 were not written by the same person who wrote the signature to No. 1.

Int. 8. State your reasons.

(Objected to as above.)

Ans. One reason is, that the three signatures are of the same length, follow the same base-line, cover each other when placed one upon the other; and that no person writing off-hand could possibly make three signatures so nearly exactly alike. Another reason is,

781 that, in the signatures to 10 and 15, peculiarities of a hand-writing differing essentially from those exhibited in the signature to No. 1 are visible to my eye. The signature to No. 10

is mended, or otherwise overlaid with ink, in various places. The signature of No. 10 shows evident marks of being copies of No. 1, as does No. 15—copies in some respects—the fact that they are of the same length, and cover each other when held up against the light. No. 10 and 15 differ from No. 1 in the general tendency of the hand to another style of writing. The disposition of the hand in writing, in the signature to No. 1, is more to the perpendicular, and slopes inclining to the right, than in Nos. 10 and 15. There is an upward bias or tendency in the upward strokes of the letters in 10 and 15, whilst in No. 1 the tendency is downward, as for instance, more particularly in the v in Sylvia, connecting line with the i, between the o and w in Howland, between the w and l in same, in No. 1. The signature of No. 10 has altogether too much of the usual running slope in ordinary handwriting to allow of its having been written by the hand that wrote the signature to No. 1. The same is true of No. 15. Another reason I have for believing that those two signatures of 10 and 15 were not written by the same hand that wrote signature to No. 1 is, that no person could write his own signature three times or twice so nearly alike. I believe it to be impossible for any person to make his signature twice exactly alike. I do not think of any more especially to say at present.

Int. 9. State what opportunities you have had of examining these signatures to 10 and 15, and of the signatures to the standards, and with what degree of care the examination has been made.

(Objected to as above.)

Ans. These original papers have been presented to me below, and I should suppose I had occupied an hour and a half in examining them. I gave them the most careful examination I was competent to, measuring them, comparing them, and otherwise examining them. I would add that I have had photographic copies of No. 1 and No. 10 (F. W. P.) in my hands for some weeks past, to which I have given a very deliberate and careful examination.

Int. 10. Now state what degree of confidence you have in the opinion you have expressed as to the want of genuineness in the signatures to Exhibits F. W. P., 10 and 15?

(Objected to as above.)

782 Ans. I should say the next degree to knowing absolutely who did sign them—seeing them signed. I mean by that that I have not a solitary doubt that they are forged or simulated signatures.

Int. 11. State in what manner, in your judgment, these signatures to Nos. 10 and 15 were formed—in what way they were made up?

(Objected to as above.)

Ans. Undoubtedly by tracing, in some one of its various methods.

Int. 12. State whether or not in the handwriting of the bodies of the papers F. W. P., 10 and 15, you discover any evidence of the hand that wrote or prepared the signatures to Nos. 10 and 15.

(Objected to as above.)

Ans. I do.

Int. 13. State any indications or characteristics of the handwriting in the body of 1, 10, and 15, which you discover, if any, in the signatures to Nos. 10 and 15, as briefly as may be.

(Objected to as above.)

Ans. Take, for instance, the "and" in the filling of F. W. P., 10, at the termination of the word thousand—it is in the sixth line from the bottom of second page; the word "and," third line from the top, same page; also filling of No. 1, F. W. P., on the last page, under the signature of Sylvia Ann Howland; the word "and," twice, on the third and fifth line from bottom of the page; also the end of the name Howland, top of the second page, first line; also, I must say the same thing of all the "ands" on the first page of same document, No. 1. I mean to include in this the and terminating the name Howland on that page. I see that, also, in the general structure of that part. I can see it in a way that it is next to impossible to describe so as to make another understand me. The general character and feeling, if I may use the term, of the handwriting in the body of the documents is clearly expressed to my eye in the signatures to Nos. 10 and 15 more particularly in the "and," the up-stroke connecting the fore part of the n with the latter part, in Howland—the up-stroke begins at the bottom, standing clear from the body of the first part of n; that's characteristic of the handwriting of the three documents. The same tendency is manifested in the finish of the d in Howland, both in Nos. 10 and 15, striking off at an angle. I mean to refer to the d in the signatures to 10 and 15 compared with the filling of the documents.

783 Int. 14. When did you first see the photographs of the signatures to No. 1 and No. 10, and of the instruments?

(Objected to as above, and as assuming a fact not proved.)

Ans. I should think about four weeks ago in New York city.

Int. 15. At the time they were shown you was any indication given you of the purpose for which you were to examine them?

(Objected to as above.)

Ans. Not at all.

Int. 16. State whether or not you made any examination of the photographic copies of the signatures to No. 1 and No. 10; and, if you came to any conclusion, state what it was.

(Objected to as above.)

Ans. I made such examination. I came to the conclusion that the signature to No. 10 was an imitation of the signature to No. 1, and was not written by the same hand that wrote No. 1.

Int. 17. In reaching that conclusion, or in the examination made, had you any knowledge of the purpose of the inquiry, or of the parties to be affected by it, one way or the other?

(Objected to as above.)

Ans. None whatsoever.

Int. 18. Your first examination you state was made upon the photographic copies; state whether in your subsequent examination which you have testified of, of the original papers, you found occa-

sion to change or modify the opinion formed by you upon the examination of the photographic copies, and, if so, in what respect?

(Objected to as above.)

Ans. I had no occasion to change my opinion.

Int. 19. Supposing a party wrote but little, and sometimes with difficulty, arising from a nervous affection or weakness, would you, from your experience, expect to find less or greater difference in the signatures such party should make than in those made by one who wrote habitually and frequently?

(Objected to as above.)

Ans. I should look for greater differences in the handwriting of the party not used to writing much.

Int. 20. Then, if the signatures to Nos. 1, 10, and 15 were averred to be written by one who wrote but seldom and sometimes
784 with difficulty, would or would not the identity of mechanical structure in those signatures of which you have testified, have greater or less effect in showing that some of them were false and forged than if they were averred to be signatures of one daily accustomed to write without that nervous affection?

(Objected to as above.)

Ans. I should think they would be more difficult of imitation in case of a person liable to a nervous affection.

Int. 21. Is or is not the identity or striking resemblance of mechanical structure, of which you have testified, more remarkable as coming from one writing but seldom, and sometimes with difficulty, than from the pen of one writing habitually and with ease?

(Objected to as above.)

Ans. I should say it was decidedly so.

Int. 22. If then it should appear that signature to No. 1 was written by a person who wrote seldom and sometimes with difficulty, would or would not the identity of mechanical structure in these signatures furnish still stronger proof to your mind that Nos. 10 and 15 were not genuine?

(Objected to as above.)

Ans. I should say it would.

Adjourned to Tuesday, Oct. 2, at 9¾ o'clock, a. m.

TUESDAY, *Oct.* 2.

Direct resumed:

Int. 23. Do any reasons occur to you for the opinion last stated?

(Objected to as above.)

Ans. Naturally, an unskilful person attempting to write three signatures alike would be more apt to fail from want of skill in handling and controlling the pen; because the thing can't be done by anybody to write three signatures alike. I am speaking of writing offhand.

Int. 24. What degree of proficiency have you yourself in the use of the pen as penman?

(Objected to as above.)

785 Ans. I think, as regards my general proficiency in the use of a pen, that I have no superior in New York city.

Int. 25. What is your reputation on that point in New York so far as you know?

(Objected to as above.)

Ans. I think it will fully sustain my answer to the previous question.

Int. 26. Did you or not prepare the original of the photographic picture which has been known as the Emancipation Proclamation, and, if so, with what it was done? Please describe it briefly.

(Objected to as above.)

Ans. I did prepare the picture named. It was done with steel pens and ordinary writing ink. The picture is made up of imitation of engravings; in the centre, the head of Lincoln is imitated from the photograph by Brady; there was a large tree at the left-hand side; there were other illustrations which I might name, all done with pen and ink. It also contained the whole of the proclamation, written in peculiar text.

Int. 27. State whether you can or cannot, with your experience and skill in handwriting, write three signatures as closely resembling each other in mechanical structure as the signatures to Nos. 10 and 15 resemble signature to No. 1? Observe that the question refers to writing, and not to copy by tracing, or otherwise.

(Objected to as above.)

Ans. I cannot.

Int. 28. In your judgment, can it or not be done by any writer with the ordinary use of the pen?

(Objected to as above.)

Ans. It cannot be done.

Int. 29. In examining these bills of sale signed by Sylvia Ann Howland, did you or not find any two signatures as nearly alike in their mechanical structure as Nos. 10 and 1 (F. W. P.?)

(Objected to as above.)

Ans. I did not.

Int. 30. Whether or not you have tried the experiment of writing your own signatures as nearly alike as possible, and, if so, how frequently, and with what result?

(Objected to as above.)

786 Ans. For a great many years back, I have tried it occasionally; within a few weeks back, I have tried it some hundreds of times, without finding one that would cover another when held up to the light against the window. I made letter-press copies for the purpose of testing the same.

Int. 31. Did you in your acquaintance with other writers ever know any others of them to try the experiment, and, if so, with what result?

(Objected to as above.)

Ans. I have seen the experiment quite largely tried in the manner described as above, and the result invariably the same—utter failure.

Cross-examination:

(The following cross-examination by David Thaxter, esq., of counsel for complainant, is stated to be de bene esse, and not waiving any objections heretofore taken.)

Cross-int. 1. Have you always lived in or near New York?

Ans. I have not. I have lived in Boston some four or five years, from 1832 to 1837; also again from 1842 to 1850.

Cross-int. 2. Before you first lived in Boston, where did you live; and where were you born? State all the places you have lived in and your occupation since you were of age.

Ans. I was born in Middleboro', Massachusetts; lived there, according to family traditions, five or six years, and then went to Little Compton, R. I., where I lived some ten or twelve years; then I went to Boston, since which I have lived in Boston or New York. My first occupation when I came from Little Compton to Boston, I was in an apothecary store in the city; staid there over a year; then I was a desk clerk in a wholesale drygoods. From that period I have been alternately a public accountant and a book-keeper for various people.

Cross-int. 3. Who first applied to you to examine the photographic signatures which you have referred to in your direct examination?

Ans. Mr. Thomas M. Stetson.

Cross-int. 4. When and where?

Ans. At the counting-room of A. A. Low & Brothers, New York city, about four weeks ago.

Cross-int. 5. Were you then acquainted with Mr. Stetson?

787 Ans. No, sir.

Cross-int. 6. Who, if any one, came with him or introduced him?

Ans. He came alone. No one introduced him.

Cross-int. 7. Did he there state to you that he wanted to engage your services in a matter of alleged forgery?

Ans. I did not understand him to make any such statement as that.

Cross-int. 8. Did he state whether any person, and whom, had sent him to you, or advised him to come to you, or in any way recommended you to him?

Ans. He mentioned the names of two or three prominent New York gentlemen, whose names I do not recollect, who had advised him to call on me. They were names familiar to me.

Cross-int. 9. Can't you give the name of one person whom he mentioned about four weeks ago to you?

Ans. I don't recall one.

Cross-int. 10. Do you remember whether the names of either Mr. Barling or Mr. Davis, of the firm of Barling & Davis, were mentioned?

Ans. I do not.

Cross-int. 11. Do you remember whether either of the names was that of any lawyer in New York?

Ans. I have only a general recollection that one of them was a lawyer.

Cross-int. 12. Can you give his name? Was it Mr. Southmayd or Mr. Evarts?

Ans. I don't recall either name.

Cross-int. 13. Do you remember whether John E. Williams, president of the Metropolitan Bank, was one?

Ans. I couldn't say, certainly.

Cross-int. 14. What is your best recollection in regard to the person last named?

Ans. On hearing the name it occurred to me that might possibly have been one of the names.

Cross-int. 15. Did Mr. Stetson at that time state to you that he wished to employ you for any purpose?

Ans. I don't recollect that he made any such statement in words. I undertook to look over papers left with me, and give my opinion concerning them. When he left, I understood it was probable that I might be called to testify concerning them.

788 Cross-int. 16. How long did he remain with you at that time?

Ans. From thirty to forty-five minutes, I should say.

Cross-int. 17. And during that time were you talking together more or less?

Ans. We were.

Cross-int. 18. When did you first know anything about any controversy in regard to Sylvia Ann Howland's will, or her estate?

Ans. On the occasion of my interview with Mr. Stetson, spoken of above.

Cross-int. 19. And you then learned, did you not, that the genuineness of a certain signature or signatures was to be contested by the parties for whom Mr. Stetson was counsel?

Ans. I did not learn any such thing. I mean by that, I didn't know which party he was counsel for, or anything about it.

Cross-int. 20. Did you learn that a certain signature or signatures was to be contested by some party, or was nothing said at that interview about the genuineness of signatures?

Ans. I gathered from that interview that there was a controversy pending with regard to certain signatures, as to their genuineness or falsity.

Cross-int. 21. Do you mean to say that this was a mere inference of yours, and that Mr. Stetson did not, during the whole interview, state to you, in substance, that there was, or was to be, such a controversy?

Ans. My recollection now is, that it is my inference. I recall no direct statement to that effect.

Cross-int. 22. Then, when you say that when Mr. Stetson left, you understood it was possible you might be called to testify concerning the papers which he left with you, that was your inference, was it, and not anything that Mr. Stetson had said to that effect?

(Respondents object, as assuming a fact not stated by witness.)

Ans. Perhaps that particular portion of it was not wholly my in-

ference. I think something was said of the possibility I might be called as a witness in a week or fortnight or so.

Cross-int. 23. Before this was said, had you informed Mr. Stetson what your opinion was as to the genuineness of the signatures to the papers which he had submitted?

Ans. No decided opinion at all.

789 Cross-int. 24. When, as you say, something was said of the possibility of your being called as a witness in a week or a fortnight or so, were you informed where you would be wanted as a witness, or when the suit was?

Ans. In Boston, if I recollect rightly.

Cross-int. 25. Did you in any way give Mr. Stetson to understand, in reply to this or otherwise, that you would come as a witness?

Ans. I understood it was contingent on the opinion I arrived at in regard to the documents.

Cross-int. 26. Will you please answer the question, which calls for what you said as to your willingness to do as to coming as a witness?

Ans. I think I expressed a good deal of unwillingness to have anything to do in the matter, as detrimental to my business occupations.

Cross-int. 27. But did he leave with the understanding with you that you would come as a witness, if desired?

(Objected to for form and substance, and as calling for the opinion of the witness as to the understanding in the mind of another person.)

Ans. I presume he did.

Cross-int. 28. And whether he would desire it you understood to be contingent upon the result which you should arrive at as to the genuineness of the signatures to the papers he left with you, did you?

Ans. I so understood it.

Cross-int. 29. You say that you had not arrived at any decided opinion when he left. Had you formed some opinion, and was it in favor or against the genuineness of either or all of the signatures to the papers he handed to you?

Ans. I uttered no decided opinion. I had formed no decided opinion when he was there; the opinion was that one signature was a copy or imitation of the other.

Cross-int. 30. Did you in any way express this to Mr. Stetson while there.

Ans. My impression is that I reserved my opinion on the subject.

Cross-int. 31. Did you in any way indicate to him any opinion, or the inclination of your mind, while he was there?

Ans. I do not recollect that I did. I know my intention was to reserve anything that could be taken as an opinion from me.

790 Cross-int. 32. Do you recollect that you did not in any way give him any intimation of what your opinion or the inclination of your mind then was upon this subject?

Ans. It is put in such a questionable shape that I hardly know how to answer it. I mean that it was my intention not to give him any decided opinion, and that I acted in accordance with my intention.

Cross-int. 33. The question does not ask whether you had or expressed in any way a decided opinion, but whether you now recollect that you did not in any way intimate to him anything in regard to your then impression or the then inclination of your mind as to the genuineness or falsity of any of those signatures.

Ans. I can't recollect with absolute certainty about that.

Cross-int. 34. Can you recollect whether anything was said at that interview by either you or him as to whether any other person had or was to make any examination of those signatures, or of similar photographs or the originals, besides yourself?

Ans. I recollect his mentioning one or two so engaged, but their names I don't recall.

Cross-int. 35. As parties who had or were to make the examination?

(Objected to as immaterial.)

Ans. I don't recollect about that.

Cross-int. 36. Did Mr. Stetson himself make any reference to either of the signatures at this interview?

(Objected to as incompetent.)

Ans. I think he did; he must have called my attention to them.

Cross-int. 37. Was anything said at this interview in regard to your compensation; and, if so, was any amount agreed upon?

(Objected to as incompetent.)

Ans. The matter of compensation was alluded to. No amount agreed upon.

Cross-int. 38. Was anything said as to the magnitude of the case, or the amount of property involved?

Ans. I cannot say certainly whether I learned at that time or another something about it. My impression is that there was something said, and that is an impression merely. I did not care
791 to be engaged in this kind of business, and what was said at that time produced but little impression upon my memory.

Cross-int. 39. Was Miss Robinson's name mentioned in this interview?

Ans. I think it was, incidentally.

Cross-int. 40. You didn't understand that Mr. Stetson was her counsel, did you?

Ans. I didn't know anything about it. I was ignorant about it at that period.

Cross-int. 41. When did you cease to be thus ignorant, and learn that Mr. Stetson did or did not act for Miss Robinson?

Ans. I couldn't state the precise moment or hour. My object was, when I took the papers, to know nothing about the matter, except the signatures. I think I did not understand the case at all, as to the matter of counsel and their relations, until I got here some week ago.

Cross-int. 42. What papers did Mr. Stetson show you at that interview, and what papers did he leave with you?

Ans. He showed me none but what he left, I think. They were four pages of photographic copies of manuscript, two enlarged photo-

graphic copies of signatures, and two signatures on slips of paper, not photographs. That is all I recall.

Cross-int. 43. As to the two signatures on slips of paper, was there any other writing on them?

Ans. I recollect no writing on them, except the signatures. I do now recollect that I have not stated it correctly; one was a signature appended to a document or letter, and the other was on a slip.

Cross-int. 44. As to the two signatures last referred to, you had no knowledge whether they were original or genuine, had you?

Ans. No knowledge of my own. [After some consideration of the signatures, I asked Mr. Stetson, if those were originals known to be such by him, and understood from him that they were the genuine signatures of Sylvia Ann Howland.]

(Clause in brackets objected to by complainant as not responsive, and as otherwise incompetent.)

Cross-int. 45. Of what name were those signatures?

Ans. Sylvia Ann Howland—those two last referred to, I mean.

Cross-int. 46. What were the photograph copies of manuscript?

792 Ans. Two of them purported to be a will of Sylvia Ann Howland's; these two were in fact one document on two pages. This was a will in favor of Miss Robinson. The other two pages purported to be a second page of said will.

Cross-int. 47. How many photographic copies of signatures were there to these copies of manuscripts, and whose signatures did they purport to be copies of?

Ans. The will had, I think, four signatures; one of Sylvia Ann Howland, and as witness Peleg Howland, I think, Electra Montague. The third I don't at this moment recollect. The other, the second page of the will, had only one, Sylvia Ann Howland's.

Cross-int. 48. How many photographic copies of what purported to be the signatures of Sylvia Ann Howland, in what purported to be the natural size, and how many in what purported to be the magnified or enlarged size, did Mr. Stetson leave with you?

Ans. Two of each.

Cross-int. 49. And it was upon these papers and signatures, which you have stated Mr. Stetson left with you, that you first formed the opinion in regard to the genuiness or falsity of either of what purports to be the signatures of Sylvia Ann Howland, of which you have testified here, was it not?

Ans. It was; in conjunction with the two signatures in writing, one on a slip and one a letter, to which I have referred.

Cross-int. 50. And that opinion and the reasons for it were the same as those given here, were they not?

Ans. They were.

Cross-int. 51. When did you next see Mr. Stetson, and where, after the interview to which you have referred?

Ans. At the Tremont House, Boston, last Wednesday night.

Cross-int. 52. Between the times covered by the last question and answer, whom, if any one, had you seen in relation to this case or your testimony in it?

Ans. No one.

Cross-int. 53. Did you come here by request of or appointment with any one, and whom, at the time you saw Mr. Stetson at the Tremont House, and have you been here since?

Ans. I came at his request. I have been here since that time.

793 Cross-int. 54. Had you communicated in any way with Mr. Stetson before coming here, and in what way were you informed of his desire that you should come?

Ans. I had communicated with him by letter to New Bedford some three weeks ago. He informed me by letter that he desired I should come to Boston.

Cross-int. 55. Was this letter of yours to him in answer to a letter of his to you?

Ans. The first letter I wrote to him of my own accord. I did not at that time know his address. I wrote a letter to Mr. Stetson, of New Bedford, to ascertain if he was the party who called on me. The second letter was in reply to one he had written me. This second letter was some two or three weeks ago. I believe I had two letters in all from Mr. Stetson.

Cross-int. 56. Do you mean in answer to the third interrogatory to refer to cases actually tried in court?

Ans. Part of them I knew to be in court from what I was told; one or two of them, I do not know whether they were in court or not; but in those instances I understood they were in certain contingencies intended to be brought into court.

Cross-int. 57. Have you ever given your testimony in any of the cases referred to in answer to the third interrogatory?

Ans. Only in the Hunter case.

Cross-int. 58. And in that case was it in favor of the party who applied to you?

(Objected to as immaterial.)

Ans. It was.

Cross-int. 59. Do you know what witnesses were examined in that case in regard to handwriting, and did they all agree or did they differ in regard to the genuineness of any writing in controversy in the suit?

(Objected to as immaterial.)

Ans. Several were examined on both sides. I heard the testimony of only one given after my own. His name, I think, was Park. I know nothing of my own knowledge as to their agreeing or disagreeing.

Cross-int. 60. At the time Mr. Stetson had the interview with you at New York, did he state to you anything in regard to Miss Sylvia Ann Howland as to the condition of her health, her nervous

794 condition, the facility or difficulty with which she wrote her own name, and whether she was or was not in the habit of writing much or little, or anything in regard to her power and habits of writing?

Ans. I have no recollection of any such statements in any respect.

Cross-int. 61. And you yourself had no knowledge of Miss How-

land upon the subject last inquired of, or knowledge of her in any, had you?

Ans. None at all.

Cross-int. 62. What, if any, experience have you had personally in regard to the signatures of parties written under circumstances supposed in nineteenth interrogatory?

Ans. I have had only the general experience incidental to the study of the manuscript of different persons, and in a case of a signature of a will, supposed to be forged, at Staten Island, some months ago, in which the subject of nervousness, as exhibited in handwriting, came up. The nervousness of my own hand at times has been a subject of thought and experiment with me to no small extent.

Cross-int. 63. In what instance did you ever examine the signature of a person who was sick and so nervous as only to be able to write with great difficulty, and then but seldom, and only the signature of such party in relation to its genuineness?

Ans. I do not remember any one instance that corresponds exactly in all its details to that supposed.

Cross-int. 64. State whether or not you remember that in the exhibits numbered R. C. P., 1 to 30, R. C. P., 32 to 49, and R. C. P., 50, and R. C. P., 51, you noticed any instance where Miss Sylvia Ann Howland's signature in any of the letters had been retouched or written over to any extent, or in part written apparently twice, that is, by two strokes of the pen, in making any portion of the letter?

Ans. I noticed two or three instances of that sort.

Cross-int. 65. And only two or three, as you now remember?

Ans. My attention was particularly called to two or three only. There may have been more.

Cross-int. 66. How was your attention thus called?

Ans. In looking them over, the character of the signatures attracted my attention.

Cross-int. 67. In answer to the thirteenth interrogatory,
795 you have referred to the word "and," either as a separate word or as a part of the word Howland; what indications or characteristics do you mean to refer to in that answer? State all.

Ans. As I said yesterday, there is a general resemblance, marked and striking to my eye, between the word "and" in Howland, in No. 10 and 15, and the letters and in the three documents, and the termination of the word Howland in one or two instances referred to yesterday—one especial indication is the construction of the letter "n." In No. 10 the up-stroke commencing nearly or quite at the bottom for the first part of the letter, as being different from that of the signature to No. 1, and characteristic of the same letter in the "ands" spoken of. Also of other n's found in the three documents—almost every one I see.

Cross-int. 68. Have you described all the characteristics or peculiarities you find in the letter n in your statement in regard to it in your last answer?

Ans. All that occur to me at this moment.

Cross-int. 69. In the other letters making the word or syllable

"and," state all the peculiarities or characteristics which you find, and which you refer to in your answer in relation thereto.

Ans. There is the letter d as made in the signatures to 10 and 15; there is a tendency to terminate it in an angle similar to those at its termination in the body of the documents. The same instinctive tendency of the hand appears at the termination of the d's in the body of the three documents as appears in the signatures to 10 and 15. The structure of the a in and is also the same in the signatures of 10 and 15 as in the a's in the bodies of the documents, and very much unlike the structure of the a in "Howland," signature No. 1. Taking them all together, the a n d, I see the structural tendency of the hand that wrote the body of the three documents in the signatures to 10 and 15.

Cross-int. 70. At the first interview with Mr. Stetson at New York, was any reference made by him to any or what parties would be responsible for your compensation, or to whom you might look for your pay, or to whom he would refer in regard to it?

Ans. No reference at all, and no inquiries at all.

Cross-int. 71. And so far as you knew, at that interview, no person was interested in this controversy with whom you had any relations, personal, social, or business, was there?

796 Ans. None at all.

And the direct examination being here resumed, proceeds as follows:

Int. 32. Whether or not had you any personal knowledge or acquaintance with Mr. John E. Williams until you met him in Boston last week?

(Objected to as not inquiring of any matter opened on cross-examination, and as otherwise incompetent.)

Ans. None. I knew him only by reputation.

Int. 33. Will you produce, if you have them in your possession, the photographic copies and the original signatures of Miss Sylvia Ann Howland, of which you testified in answer to cross-interrogatories?

(Objected to as being matter not open for re-examination, as assuming a fact not proved, and as otherwise incompetent.)

The witness here produces the papers referred to, which are put into the case as exhibits by respondents, and are marked as follows: R. C. P., 52; R. C. P., 53; R. C. P., 1st Photograph, (*a*); R. C. P., 1st Photograph, (*b*); R. C. P., 2d Photograph, (*a*); R. C. P., 2d Photograph, (*b*); R. C. P., 3d Photograph; R. C. P., 4th Photograph.

And the counsel for complainant puts the following in re-cross-examination de bene esse, and reserving all objections:

Cross int. 72. (De bene.) Have those papers been in your possession ever since they were first given you by Mr. Stetson; and, if not, when did you first part with them, and when did you see them again?

Ans. They were in my possession from that time till this morning. Then I handed them to Mr. Stetson, at Judge Thomas's office, just before I came up here.

J. E. PAINE.

797 FRIDAY, *Oct.* 5, 1866.

Testimony of George Phippen, jr.

I, George Phippen, jr., of Boston, in the county of Suffolk, aged thirty-one years on oath, say: I am now assistant paying teller of the Suffolk National Bank, and have been such for about twelve years. Questions arising from controverted signatures in that bank—of which we have, however, but few—are always referred to me.

Interrogatories by respondents:

Int. 1. State the extent of the business of that bank in comparison with the business of other banks in Boston, and how its present business compares with that done at prior times during your connection with it.

(Objected to as incompetent.)

Ans. The business of the Suffolk Bank has been rather peculiar—more with other banks than with individuals; it has been a bank of redemption. Until the Mutual Bank of Redemption went into operation, about six or seven years ago, we were the principal bank of redemption in New England—the agent of all New England banks. The National Bank of Redemption now do part of this work.

Int. 2. Whether or not you have, besides the duties of your office, given other attention to the subject of handwriting, and the comparisons of it; and, if so, to what extent?

Ans. I have. I have always given a great deal of attention to signatures and writing. I come in contact with almost everybody's checks, and am familiar with almost every one's doing business. I should say this was true for ten years back. I have examined and compared signatures, more or less, during all that time.

798 Int. 3. Now please look at F. W. P., No. 1, F. W. P., No. 10, and F. W. P., No. 15, and state whether or not, before this time, you have examined these papers; and, if so, when and where.

Ans. I have. I should think about three weeks ago, at Mr. Palfrey's office.

Int. 4. State also whether or not you have also made examination of the bills of sale marked as Exhibits R. C. P., 1 to 30, inclusive, and R. C. P., 32 to 49, inclusive; and also Exhibits R. C. P., 50, and R. C. P., 51.

Ans. I have.

Int. 5. Now, calling your attention to F. W. P., Nos. 1, 10, and 15—assuming No. 1 to be a genuine signature—say whether or not Nos. 10 and 15 are genuine signatures, in your judgment.

(Objected to by complainant on the ground that the witness is not qualified as an expert, and also that this question is not open in the state of the pleadings in this case; and complainant gives notice that any cross-examination of this witness will be made de bene esse, and not waiving these objections.)

Ans. They are not genuine.

Int. 6. Why not?

(Objected to as above.)

Ans. The resemblance of each signature is too perfect. The length of the entire signature, and of each separate word of the signature, is exactly alike on all three. I find also, that the signatures exactly cover each other. Each letter of each word matches entirely and perfectly. If these three signatures were presented to me for payment or otherwise, I should discard them all, as being impossible for all three to be genuiue. I have tried my own signature hundreds of times, also the signatures of others, and never found two signatures of my own or others that would match exactly with each other in every detail. I think it an impossibility for any person to make a signature that shall so closely resemble another.

Int. 7. Then, assuming No. 1 to be a genuine signature, how, in your judgment, were signatures to Nos. 10 and 15 made?

(Objected to as above.)

Ans. Must have been traced. They could not be done otherwise.

Int. 8. Whether in the examination of these Exhibits R. C. P.,
799 1 to 51, did you or not find any two to correspond, as you say Nos. 10 and 15 do with No. 1, F. W. P.

(Objected to for form as above, assuming a fact not proved, and as otherwise incompetent.)

Ans. I have examined those documents with the greatest care, and I find no two that will match. I found they would more of them correspond as Nos. 10 and 15, F. W. P., do with F. W. P., 1.

Int. 9. Whether in the examination of No. 1, 10, and 15, F. W. P., you found any other reasons for believing No. 10 and 15 not genuine? If so, state what they were.

(Objected to as to the fifth interrogatory.)

Ans. I did. I should like to say, at first sight, that these signatures could not be written on the same bevel. The signatures on Nos. 10 and 15 are very much cramped—not free in expression. One of them, No. 10, to my mind, has been written in part with two strokes of the pen. This No. 10 looks to me as though it were traced with a pencil, and finished in ink afterwards. No. 15 has been done more successfully, probably done directly with ink. I think signatures to 10 and 15 bear a very striking resemblance to the filling up of these documents. The shape of some letters in the signature of No. 10 agree exactly with the parts of same letters in the filling up of the document. The signature to No. 15 varies a little in the length of the whole signature, but not in any one word; which I account for by slipping of the paper while tracing. The general appearance of the signatures is so perfect in the comparison that it is impossible for all three to be genuine.

Int. 10. State the degree of confidence that you have in the conclusion which you state, that signatures to Nos. 10 and 15 are not genuine.

(Objected to as above and as otherwise incompetent.)

Ans. I have no possible doubt that they are as I represent.

Cross-examination:

(The cross-examination which follows, by David Thaxter, esq., of counsel for complainant, is stated to be de bene esse, reserving all rights, and not waiving objections heretofore taken.)

Cross-int. 1. You have stated that the questions of controverted signatures in the bank with which you are connected have been but few. Have either of those been cases of tracing, to your knowledge?

800 Ans. I think not.

Cross-int. 2. In examination of bank-bills, is not the judgment, as to their genuineness and whether they are counterfeit, influenced by the general appearance of the engraving of the bill and its general appearance otherwise, as much as by the signature to the same?

(Objected to for form and substance.)

Ans. I should say it was, perhaps more. We do not look at signatures in counterfeit bills as a general thing. Some of the national bills have the signatures engraved.

Cross-int. 3. Have you ever been examined before this occasion, as a witness, for the purpose of getting your opinion or judgment as to the genuineness of any papers, where that was the subject of controversy?

Ans. No, sir.

Cross-int. 4. Have you ever made investigation in regard to the genuineness or falsity of any writing or signature, for the purpose of having your opinion taken as a witness before?

Ans. Never strictly for that purpose.

Cross-int. 5. Who first asked you to examine papers F. W. P., 1, 10, and 15?

Ans. Mr. Olney handed me the papers. He was the first person who spoke to me on the subject. Mr. Olney came to the bank, and asked for our president and one of our cashiers, and they recommended me, which was the first I knew of the case, except what I saw in the newspapers.

Cross-int. 6. How long after that was it before you went to Mr. Palfrey's office?

Ans. I think the same day.

Cross-int. 7. When was that?

Ans. About three weeks ago.

Cross-int. 8. How long were you there, and who was with you?

Ans. Perhaps fifteen or twenty minutes. Mr. Olney was with me.

Cross-int. 9. When did you next see those papers?

Ans. I think I did not see the original after that time. Photographic copies I have seen several times since.

Cross-int. 10. Did you state to Mr. Olney, at Mr. Palfrey's office, or afterwards, your opinion of those signatures?

801 Ans. I did; after a careful examination. It was either in the office or after going out.

Cross-int. 11. You have, in answer to the sixth interrogatory, "I find also that the signatures exactly cover each other. Each letter

of each word matches entirely and perfectly. If these three signatures were presented to me for payment, or otherwise, I should discard them all, as being impossible for all three to be genuine." Do you mean by that, that if you had had no information, outside of the papers, which of the signatures were genuine, that you could not have told which was the genuine signature, and which was not?

Ans. I could not have told without examination; that is, if you had seen only the signatures. I mean to say, at first glance.

Cross-int. 12. State what indications you see in No. 10 which lead you to say that "No. 10 looks to you as though it were traced with a pencil, and finished in ink afterwards." State all the indications you notice.

Ans. The reason why I thought so is, that the A in Ann and the H in Howland have been patched up after the original writing. I think that A in Ann has been finished with three strokes of the pen; whereas the whole word Ann, in the signature that is not contested, No. 1, is written without taking the pen from the paper. In all the signatures that I have examined among Exhibits R. C. P., 1 to 51, I find this peculiarity of this word Ann being written without taking off the pen. The bow of the H in Howland has been made with two strokes of the pen, and the bottom of the d in Howland (I am referring to F. W. P., 10) is longer and occupies more space than in No. 1. I find this same style of letter perfectly shown in the filling of these documents Nos. 1, 10, 15, F. W. P. I have seen but one of the signatures in the bills of sale that is in any way covered after being written; and that seems to be entirely written over—that is, the same letter almost all written twice. I find it is in the power of attorney, R. C. P., 51.

Cross-int. 13. When, in your last answer, you say you find the same style of letter perfectly shown in the filling of these documents, 1, 10, and 15, F. W. P., state how that indicates to you that No. 10 was traced with a pencil, and then finished in ink—the question which you were called upon to answer being, What indicates you saw that No. 10 was written with a pencil at first.

802 Ans. Perhaps not so much from that individual point, although I can point the letter, in the body of the filling, to which I had referred. I don't think I said it was written with a pencil, but I said I thought it was. In making this signature to No. 10, the bottom of the d being longer than on No. 1 would naturally come from covering a traced signature, whether traced in pencil or ink, and in this case shows the peculiar resemblance to the handwriting in the filling.

Cross-int. 14. Why any more an indication of tracing than the handwriting in the filling, to which it has, as you say, a peculiar resemblance?

Ans. I believe those papers are all filled out in the same handwriting—are they not? My opinion is, that they are; and, if so, the filling up of No. 10 plainly shows to my mind that the characteristics in the signature are identical with those in the filling; and, there-

fore, the party making the signature could not help falling into some of their own style in doing it.

Cross-int. 15. Will you please answer the last question, and state why the peculiarity of the d, in making this signature, No. 10, indicates that that was traced and not written any more than the same peculiarity which you say you notice in the handwriting in the filling indicates that that was traced and not written?

Ans. The reason why I think this signature is traced, and particularly d, is because the difference in the lower part of d, in length, in No. 10 and No. 1, is caused by the party making it—as I have said before—falling into their own peculiarities in filling it up. In the filling up of the papers I find no trace of anything that leads me to think these papers are traced, as the writing is all uniform; and the forms of the several letters are also the same in all these papers.

Adjourned to Oct. 6, and then to Oct. 8, at 10 a. m.

OCT. 8, 1866.

Cross-examination resumed by Sidney Bartlett, esq., of counsel for complainant:

Cross-int. 16. Did you ever attempt to trace a signature; and, if so, what, and for what purpose?

Ans. I have. I cannot remember what, nor what purpose.

803 For this very study of which I have spoken, of handwriting and signatures. I can't recollect particularly what names. Perhaps for my own amusement I have done it.

Cross-int. 17. Can't you tell the purpose or the name in any one instance?

Ans. I have traced my own name. I can't recollect any other purpose than as stated before. I did it to compare the signatures traced and written.

Cross-int. 18. Then you never attempted to trace the signature of any other party, did you; and, if so, when and whose?

(Objected to as assuming a fact not in proof.)

Ans. I have, often; but I cannot remember at what time or whose.

Cross-int. 19. The signatures you thus traced were signatures to original documents, were they not?

(Objected to as above.)

Ans. Sometimes. I remember of tracing signatures written on paper merely for that purpose.

Cross-int. 20. Whose signatures were they that were written for that purpose?

Ans. I cannot remember. I merely call to mind the fact that I have so traced them.

Cross-int. 21. You cannot recall the names of any one person whose signature you have thus traced, can you?

Ans. I can, but do not think I can be called on to reveal the names of any signatures I may have traced; at least, I do not want to; I do not think it's just right.

Cross-int. 22. I must call on you to state the names of parties, that

I may proceed to cross-examine you upon it; will you please answer the last question?

Ans. I object to answer the question.

Cross-int. 23. What is the reason of your objection?

Ans. The names I might call are the names of parties who I might not wish to know that I had been using their signatures to trace or copy.

Cross-int. 24. Why not; you destroyed your imitations, did you not?

Ans. I did. This signature business is one that I have taken
804 up of myself, and I don't care about anybody outside knowing anything about it.

Cross-int. 25. What was the nature of the original documents whose signatures you traced; were they bank-bills?

Ans I never traced bank-bills signatures. Some were letters, some checks.

Cross-int. 26. Checks deposited in the bank of which you were an officer?

Ans. I can't remember one particular instance, but I know that I have used checks in that way. They may have been checks so deposited.

Cross-int. 27. Before you answered the last part of the preceding question, did the counsel for respondent say you had sufficiently answered the question, or to that effect?

(Objected to as not stating correctly the fact, which occurred after the counsel for complainant had stated to the witness that the question was not answered. Counsel for respondent suggested that it had been answered, claiming the same right to make the statement as the counsel for complainant had to say it had not been answered.)

Ans. I do not exactly understand why that question is put to me. If I heard it, everybody else did.

Cross-int. 28. Did you communicate to the cashier or the president and directors of the bank the fact that you had traced the signatures to any of the checks?

(Objected to for form and substance.)

Ans. I did not think there was any necessity of that.

Cross-int. 29. Did you do so?

(Objected to as above, and as cross-examination upon a matter not opened by respondents.)

Ans. I did not.

Cross-int. 30. How did you do your tracing? Describe the manner.

Ans. Several ways; with ink and with pencil, by placing them at the window; that is the best way to do that kind of work.

Cross-int. 31. What are the other ways of doing that kind of work?

Ans. I know of no other. I presume the pencil and pen are all that are used in tracing; at least, they are all that I have ever used.

805 Cross-int. 32. And you always did it at the window, did you?

Ans. Not always. I have made impressions on the flat surface of the table.

Cross-int. 33. Were you successful in this latter mode?

Ans. If I could have good light and good paper, I could perhaps do full as well as at the window.

Cross-int 34. What sort of paper do you mean by good paper for tracing through?

Ans. Depends on the character of the signature to be traced.

Cross-int. 35. Explain in detail.

Ans. A heavy signature would not need so thin a paper as a lighter signature.

Cross-int. 36. In all your tracing you selected, did you not, the thinnest paper with which you could accomplish your object?

Ans. I do not know as that is necessarily so. No, sir; I used paper that I could best see through; whether thick or thin it has according to the material of the paper.

Cross-int. 37. Have you stated all the characteristics in the body or filling up of F. W. P., 10 and 15, which are like the signatures to those papers? State all you can find now.

(Question withdrawn.)

Cross-int. 38. Will you now state each and every characteristic in the body or filling up of F. W. P., 10 and 15, which you are willing to say are like the signatures to those documents?

Ans. I think the general appearance of the filling up is one of the strongest reasons why they compared with the signatures. I think the d in Howland, which is longer in No. 10 than in No. 1, compares with the same letter in the filling up of No. 10. In No. 15 it does not show so plain. The signature on No. 15 is a closer imitation than No. 10, in respect to the letter being nearly of the same length as in signature to No. 1. There are not so many imitations of the handwriting of the party that made this signature in No. 15 as there are in No. 10.

Cross-int. 39. Is that all the answer you can make to the last preceding question?

Ans. I can say that the signatures to Nos. 10 and 15 look to me so much like the filling up of those papers, that it is my opinion that the same party who filled the documents made the signatures.

803 Cross-int. 40. I have asked you for the particulars, the details, upon which this opinion is founded; have you given all which you can give?

Ans. I think the filling of this document, No. 10, and the signature, was written with the same pen and the same ink. No. 15 signature is also written with the same pen and ink as the body of No. 15, but not with the same as the body of No. 10. I find the A in Ann in No. 15—a part of it—seems to be light, rather tremulous; it may be from the pen not having sufficient ink in it. I see many such indications in the filling up. I find this in w in wish; in f in for; and ye in year; the whole word "especially;" and the word friends. I do not at present see any other; I dare say I could find others if I took time. While I look again I see in the h in hundred

(last line but one, second page, No. 15) a striking similarity to the way of using the pen last pointed out. I would say that the filling up and signatures of No. 15 are, to my mind, made by the same handwriting. That is all I have to say at present.

Cross-int. 41. You have now given all the details you can upon present inspection, have you not?

Ans. All that I notice at this time.

Cross-int. 42. When you first saw F. W. P., 10, did the fact that the letters had, more or less of them, been retouched by a pen, attract your attention; and was that the first thing you noticed?

Ans. It did attract my attention; it was not the first thing.

Cross-int. 43. What was?

Ans. The very remarkable fact that all these signatures were written on the same bevel.

Cross-int. 44. My question is as to No. 10. Did not the mode in which the letters had been retouched, the moment you saw them, give you the idea of tracing?

Ans. It did.

Cross-int. 45. Did you find these marks of retouching in any of the Exhibits R. C. P., 1 to 51, inclusive?

Ans. I did not, except in the power of attorney.

Cross-int. 46. Who told you who wrote the filling of papers 10 and 15, F. W. P.?

(Objected to as assuming a fact not proved.)

Ans. No one.

Cross-int. 47. You do not know then who did?

807 Ans. I do not know.

Cross-int. 48. And no one has told you, have they?

Ans. No one.

Cross-int. 49. Did you compare R. C. P., 50, with the bills of sale?

Ans. I think I have not seen this (50, before.

Cross-int. 50. Did you compare R. C. P., 51, with the bills of sale?

Ans. I did.

GEO. PHIPPEN, JR.

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FRIDAY, *Oct.* 5, 1866.

Deposition of Solomon Lincoln.

I, Solomon Lincoln, of Hingham, in the coouty of Plymouth, aged sixty-two years, on oath say: That I am cashier of the National Webster Bank of Boston. I have been cashier of that bank since it commenced business in 1853.

I was a member of the Plymouth bar, practising in Hingham, from 1826 to 1841, when I was appointed marshal of the Massachusetts district, which office I held till December, 1844. Then I resumed practice in Hingham, and continued it till 1849. Then I was appointed a bank commissioner, which I continued to be until my appointment as cashier of the Webster Bank. I have been a member of both branches of the legislature.

Interrogatories by respondents:

Int. 1. State whether you have had occasion to give your attention to handwriting, and the comparison of handwriting, and, if so, to what extent?

Ans. I have; especially while holding the office of cashier. I have signed all the bills issued by the bank, and, incidental to the discharge of my duties, there would arise various occasions for the comparison of handwriting. The correspondence of the bank has been entirely in my hand. I have paid attention considerably to my own signature, comparing my signatures made at different times, and in endeavoring frequently in my signatures to bills to preserve uniformity. Of necessity I have become familiar with the handwriting of our correspondents at the bank, so as to recognize it at once by the address. The signatures of other officers to bank-bills have frequently been an object of study and comparison with me. In my
810 professional practice there were also instances when the study and comparison of handwriting became incidental to my duties. I have also had occasion, in my historical and antiquarian researches, to determine the handwriting of ancient instruments and wills; this has been frequently an object of inquiry with me.

Int. 2. Please look at F. W. P., 1, F. W. P., 10, and F. W. P., 15, and state whether you have ever examined those documents, and, if so, when and where.

Ans. I have; all of them. In the office of Mr. Palfrey, and within a few weeks.

Int. 3. Looking at these papers, and from other previous examination, and assuming that the signature to No. 1 is proved to be a genuine signature, have you or not reached any conclusion whether the signatures to Nos. 10 and 15 are or are not genuine signatures, and, if so, what is that conclusion?

(Objected to by complainant on the ground that the witness is not qualified as an expert, and also that this question is not open in the state of the pleadings in this case; and complainant gives notice that any cross-examination of this witness will be made de bene esse, and not waiving these objections.)

Ans. I have arrived at a conclusion, and that the signatures to 10 and 15 are not genuine.

Int. 4. State the degree of confidence you have in that conclusion.

(Objected to as above and as otherwise incompetent.)

Ans. My degree of confidence amounts almost to moral certainty. [If called upon to act upon business transaction, in which the genuiness of the signatures was involved, I should reject those two papers 10 and 15 as not genuine.]

(Clause in brackets objected to by complainant as incompetent.)

Int. 5. Why do you conclude these signatures are not genuine?

(Objected to as to the last question.)

Ans. Because, on comparing them, they are more nearly alike than I believe it possible for any person to have made them, unless they were traced one from the other.

Int. 6. Whether you have or not ever tried yourself, or seen tried by

others, the experiment of making signatures so nearly identical in structure, and, if so, with what success?

(Objected to as above.)

811 Ans. I have in former years, and more recently, frequently and carefully tried the experiment of endeavoring to write twice alike—the object being to endeavor to make uniform signatures to bank bills—but I could not do it. I have seen it tried also by others. I could not name many instances, but I have seen it tried: the result was the same.

Cross-examination:

(The cross-examination which follows is stated by David Thaxter, esq., of counsel for complainant to be de bene esse, not waiving any rights, and reserving all objections heretofore taken.)

Cross-int. 1. Have you ever made the subject of handwriting a study for the purpose of qualifying yourself as a witness, and have you ever been called on as a witness in regard to the genuineness of signatures before the present case?

Ans. I have not, for such a purpose. To the last clause I answer that I have.

Cross-int. 2. In what cases?

Ans. It would be almost impossible for me to recall them—commencing with my professional practice, when I was often called as to the execution of instruments, etc.

Cross-int. 3. I refer to cases where the genuineness of writing was in controversy, and you were called as a witness to give your opinion as to the genuineness or falsity of the writing in question. Will you please answer the last question as thus explained?

Ans. I am not aware that I was ever called on as a witness in that capacity.

Cross-int. 4. Who first asked you to examine these papers?

Ans. Either Judge Thomas or his partner.

Cross-int. 5. When and where?

Ans. Within a few weeks. I was at the bank when asked.

Cross-int. 6. Before that you had heard of this controversy, had you not?

Ans. I had heard of the suit, but not of this point now presented to me.

Cross-int. 7. You had heard of the suits sufficiently to be
812 aware, to some extent, of the nature of the claim the complainant set up here, had you not?

Ans. I had not. I only knew, in general, that there was an effort to overthrow the effect of the will. I did not know on what ground.

Cross-int. 8. You had heard, had you not, that there was a suit pending in some form, in which Miss Robinson, the complainant, was contesting the will or the rights of the legatees under the will?

Ans. Yes; I had.

Cross-int. 9. Was one of the legatees and trustees, Dr. Gordon, the son of a gentleman who was for many years a physician in Hingham, and your family physician?

Ans. I have heard that William A. Gordon was one of the legatees,

and he was the son of Dr. William Gordon, who was for a very short time my family physician. He removed from Hingham some twenty-eight years ago. I have been a housekeeper about twenty-nine years. His son, William A. Gordon, never was in my house, nor have I seen him half a dozen times for thirty years.

Cross-int. 10. Has Mr. William Thomas, the brother of one of the counsel in this case, been president of the Webster Bank ever since you have been its cashier?

Ans. He has.

Cross-int. 11. At the time you examined these papers, at Mr. Palfrey's office, you knew, did you not, that they were papers produced on behalf or in favor of the complainant in the case?

Ans. I did not.

Cross-int. 12. Did you or not, while making the examination, look at the body of either of the papers at all?

Ans. I saw, but did not read.

Cross-int. 13. Did you look at them enough to know anything as to what they purported to be?

Ans. One, containing three signatures, seemed to be in form a will, and I took it for granted. I did not read either of the other papers, but some one informed me they related to the will.

Cross-int. 14. You did not then suppose that the paper which you took to be a will was the will which Miss Robinson was trying to controvert, and under which Dr. Gordon was a trustee and
813 legatee?

(Objected to as assuming a fact not proved.)

Ans. I did not know, at the time, the precise character of the papers before me. I had no supposition on the subject. It was not in my mind. I did not think anything about it.

Cross-int. 15. Had you, at any time, before you went to Mr. Palfrey's office to look at these signatures, heard, in any way, that there might be a question of forgery in the suit which you have said you had heard was pending?

Ans. I do not recollect that I had.

Cross-int. 16. Or in any way heard the subject of forgery in connection with that matter?

Ans. I think not.

Cross-int. 17. Did you go to Mr. Palfrey's office, at the time when you were first applied to, to examine these papers?

Ans. I was not applied to to examine these papers when I was first spoken to. All that I first knew was, that Mr. Thomas or Mr. Olney said to me that I might be called on as a witness in the Howland will case. I was surprised, not knowing for what I was wanted.

Cross-int. 18. Did you, at the time referred to in your last answer, ask how, or in what way, or to what point, you could be a witness?

Ans. I do not recollect that I did, although it would be very natural to have done so; but, if I did, I did not get such an answer as fixed it in my memory.

Cross-int. 19. How long was it after that before you went to Mr. Palfrey's office.

Ans. I think I was spoken to again, and then asked to look at some signatures in charge of a commissioner. For some reason it was not convenient to have me examine them until a subsequent day, when I was notified and went to Mr. Palfrey's office, and for the first time had a clearer notion of what was wanted. I remember now that Mr. Palfrey was out of town, which was the reason for the delay.

Cross-int. 20. Who went with you to Mr. Palfrey's office?

Ans. I think Judge Thomas went.

Cross-int. 21. Had you, previous to that time, had any personal knowledge of Miss Howland?

Ans. None.

814 Cross-int. 22. Before examining these signatures and coming to a conclusion about them, had you been told by any one anything as to Miss Howland's health, or her nervous condition; as to whether she wrote with ease or difficulty, whether she wrote much or little, or whether she did or did not for more or less years before her death write only her own name?

Ans. I had not.

Cross-int. 23. Have you, in answer to the fifth direct interrogatory, stated all the reasons you have for the conclusion you were asked about?

Ans. I stated the principal reason that then occurred to me. I might continue in explanation, but all would be involved in the same idea, that they were so nearly alike.

Cross-int. 24. Do you mean to confine your answer to such explanations as would bear upon or relate to the point, "that they are more nearly alike," in your opinion, "than it is possible for any person to have made them, unless they were traced the one from the other?"

Ans. My whole experience was brought to bear upon this point, and the judgment to which I had arrived from that experience at once enabled me to form a decisive opinion on the question presented to me. I wish to convey the idea that I did not decide simply on the sight of those three names, but all my experience in the past enabled me to answer.

Cross-int. 25. The question does not ask anything in regard to your experience, but whether you based the opinion you have given upon the fact, that, as you say, they were more nearly alike than you believe it possible for any person to have made them, unless they were traced one from the other. Will you please confine yourself to an exact answer, whether it was upon the above fact, or upon other peculiarities of the signatures, that you based your opinion?

Ans. I don't undertake to know anything of Miss Howland's handwriting or its peculiarities. The similarity of the signatures was the basis of my opinion, [and my peculiar experience of the inability of any person to write twice so nearly alike enabled me to come to that conclusion.]

(Clause in brackets objected to as not responsive by complainant.)

And, upon the direct examination being resumed, witness says in answer to interrogatories as follows:

and he was the son of Dr. William Gordon, who was for a very short time my family physician. He removed from Hingham some twenty-eight years ago. I have been a housekeeper about twenty-nine years. His son, William A. Gordon, never was in my house, nor have I seen him half a dozen times for thirty years.

Cross-int. 10. Has Mr. William Thomas, the brother of one of the counsel in this case, been president of the Webster Bank ever since you have been its cashier?

Ans. He has.

Cross-int. 11. At the time you examined these papers, at Mr. Palfrey's office, you knew, did you not, that they were papers produced on behalf or in favor of the complainant in the case?

Ans. I did not.

Cross-int. 12. Did you or not, while making the examination, look at the body of either of the papers at all?

Ans. I saw, but did not read.

Cross-int. 13. Did you look at them enough to know anything as to what they purported to be?

Ans. One, containing three signatures, seemed to be in form a will, and I took it for granted. I did not read either of the other papers, but some one informed me they related to the will.

Cross-int. 14. You did not then suppose that the paper which you took to be a will was the will which Miss Robinson was trying to controvert, and under which Dr. Gordon was a trustee and
813 legatee?

(Objected to as assuming a fact not proved.)

Ans. I did not know, at the time, the precise character of the papers before me. I had no supposition on the subject. It was not in my mind. I did not think anything about it.

Cross-int. 15. Had you, at any time, before you went to Mr. Palfrey's office to look at these signatures, heard, in any way, that there might be a question of forgery in the suit which you have said you had heard was pending?

Ans. I do not recollect that I had.

Cross-int. 16. Or in any way heard the subject of forgery in connection with that matter?

Ans. I think not.

Cross-int. 17. Did you go to Mr. Palfrey's office, at the time when you were first applied to, to examine these papers?

Ans. I was not applied to to examine these papers when I was first spoken to. All that I first knew was, that Mr. Thomas or Mr. Olney said to me that I might be called on as a witness in the Howland will case. I was surprised, not knowing for what I was wanted.

Cross-int. 18. Did you, at the time referred to in your last answer, ask how, or in what way, or to what point, you could be a witness?

Ans. I do not recollect that I did, although it would be very natural to have done so; but, if I did, I did not get such an answer as fixed it in my memory.

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Ans. I think I was spoken to again, and then asked to look at some signatures in charge of a commissioner. For some reason it was not convenient to have me examine them until a subsequent day, when I was notified and went to Mr. Palfrey's office, and for the first time had a clearer notion of what was wanted. I remember now that Mr. Palfrey was out of town, which was the reason for the delay.

Cross-int. 20. Who went with you to Mr. Palfrey's office?

Ans. I think Judge Thomas went.

Cross-int. 21. Had you, previous to that time, had any personal knowledge of Miss Howland?

Ans. None.

814 Cross-int. 22. Before examining these signatures and coming to a conclusion about them, had you been told by any one anything as to Miss Howland's health, or her nervous condition; as to whether she wrote with ease or difficulty, whether she wrote much or little, or whether she did or did not for more or less years before her death write only her own name?

Ans. I had not.

Cross-int. 23. Have you, in answer to the fifth direct interrogatory, stated all the reasons you have for the conclusion you were asked about?

Ans. I stated the principal reason that then occurred to me. I might continue in explanation, but all would be involved in the same idea, that they were so nearly alike.

Cross-int. 24. Do you mean to confine your answer to such explanations as would bear upon or relate to the point, "that they are more nearly alike," in your opinion, "than it is possible for any person to have made them, unless they were traced the one from the other?"

Ans. My whole experience was brought to bear upon this point, and the judgment to which I had arrived from that experience at once enabled me to form a decisive opinion on the question presented to me. I wish to convey the idea that I did not decide simply on the sight of those three names, but all my experience in the past enabled me to answer.

Cross-int. 25. The question does not ask anything in regard to your experience, but whether you based the opinion you have given upon the fact, that, as you say, they were more nearly alike than you believe it possible for any person to have made them, unless they were traced one from the other. Will you please confine yourself to an exact answer, whether it was upon the above fact, or upon other peculiarities of the signatures, that you based your opinion?

Ans. I don't undertake to know anything of Miss Howland's handwriting or its peculiarities. The similarity of the signatures was the basis of my opinion, [and my peculiar experience of the inability of any person to write twice so nearly alike enabled me to come to that conclusion.]

(Clause in brackets objected to as not responsive by complainant.)

And, upon the direct examination being resumed, witness says in answer to interrogatories as follows:

815 Int. 7. Whether or not, at the time of your original examination of these papers, you had a magnifying glass, or examined them simply with your eye?

(Objected to as not opened by anything in the cross-examination, and as otherwise incompetent.)

Ans. I had my ordinary spectacles. I recollect of using nothing else.

Int. 8. Whether the fact that a person wrote but seldom, and sometimes with difficulty, would lead you to expect greater or less nearness or identity of signature than if the party wrote habitually and with ease?

(Objected to as to third interrogatory.)

Ans. The more expert penman would write with greater uniformity than the inexperienced.

SOLOMON LINCOLN.

816

817 SATURDAY, *Oct.* 6, 1866.

Deposition of Charles A. Putnam.

I, Charles A. Putnam, of Boston, in the county of Suffolk, aged forty-five years, on oath say: I am a banker and financial broker, doing business in State street, Boston. The name of the firm has been C. A. Putnam & Co. I have been in my present occupation five years. Before that I was connected with banks about twenty-three years, serving as clerk, teller, and cashier respectively. I was in the Washington Bank while teller and cashier.

Interrogatories by respondents:

Int. 1. Whether or not your business has led you to examination and study of manuscript and signatures, and to what extent?

Ans. It has; and for the last twenty years; while I was teller and cashier particularly—that was about twelve years.

Int. 2. Are you a member of the board of brokers?

Ans. Yes; and have been for five years.

Int. 3. State more fully what examination and study of manuscripts and signatures you have been in the habit of.

Ans. All the time while teller and cashier, and to a considerable extent since I have been obliged to give attention to signatures.

Int. 4. Please look at F. W. P., 1, 10, and 15, and say whether you have made examination of those papers before?

Ans. I have. At the clerk's office of the United States circuit court, within ten days.

Int. 5. State whether or not you have arrived from your examination at any conclusion as to the genuineness of signatures to No. 10 and 15, assuming the signature to No. 1 to be genuine?

(Objected on the ground that the witness is not qualified as an expert, and also that this question is not open on the pleadings

818 in this case; and complainant gives notice that any cross-examination of this witness will be de bene esse, and not waiving these objections.)

Ans. I have.

Int. 6. Please to state the conclusion to which you have arrived.

(Objected to as above.)

Ans. That the signatures to Nos. 10 and 15 are not genuine.

Int. 7. If you have been able to form a judgment as to the way signatures to No. 10 and 15 were made, state it.

(Objected to for form and as above.)

Ans. Yes; I think they were traced.

Int. 8. Traced from what?

Ans. From signature No. 1.

Int. 9. Please to state the reasons which have brought you to that conclusion.

Ans. The chief reason is that the separate names so nearly cover each other, which would seem impossible, in my judgment, in ordinary writing.

Int. 10. State the degree of confidence you have in the conclusion you have stated.

(Objected to for form and as above.)

Ans. I hardly know to what you refer.

Int. 11. The conclusion that the signatures to No. 10 and No. 15 are not genuine.

(Objected to as above.)

Ans. I have so much confidence that they are not genuine that I felt prepared to state this on short examination.

Int. 12. State whether or not you have any doubt on the subject.

(Objected to for form and as above.)

Ans. Hardly a doubt.

Int. 13. State whether you have examined Exhibits R. C. P., 1 to 30, and R. C. P., 32 to 49, inclusive, and R. C. P., 50 and 51.

(Objected to as above.)

Ans. I examined several, but did not open every one.

Int. 14. Whether you drew any conclusion from your examination of those you did look at, and, if so, what was it?

(Objected to same as No. 5, and also on the ground that papers examined are not designated.)

819 Ans. It confirmed my opinion that signatures to No. 10 and 15 were not genuine.

Cross-examination:

(The cross-examination which follows, by S. Bartlett, esq., of counsel for complainant, is stated to be de bene esse, reserving all rights, and not waiving objections heretofore taken.)

Cross-int. 1. How did that confirm your opinion? State in detail.

Ans. Because there is not the sameness to them that there is to Nos. 10 and 15, compared with No. 1, F. W. P.

Cross-int. 2. How many of them did you examine?

Ans. Some eight or ten.

Cross-int. 3. What do you mean by sameness? Did you contrast the signature of No. 50 with bill of sale No. 40 now shown you, and is that what you mean by want of sameness?

Ans. I mean by sameness uniformity. I believe I contrasted signatures No. 50 with one or two others, but cannot state that it was with this precise No. 40.

Cross-int. 4. Those others with which you contrasted it were bills of sale, were they not?

Ans. They were.

Cross-int. 5. And upon that contrast you mean to say, do you not, that your opinion was confirmed?

Ans. I do.

Cross-int. 6. Did you contrast R. C. P., 51, with some of the bills of sale?

Ans. I cannot state that I did.

Cross-int. 7. What do you mean by saying that you are a banker; what is meant by that?

Ans. We are allowed by our license as bankers to pay interest on deposits.

Cross-int. 8. Is that any considerable part of your business, or is it that of brokerage?

Ans. Our principal business is that of dealing in government securities, which would not come under either head. Banking is not any considerable part of our business.

Cross-int. 9. Where were you born, where have you lived, and what have been your occupations and pursuits hitherto? State in detail.

820 Ans. Born in Danvers, Mass. I have lived in Danvers and in Boston. In the early part of my life, my father being a shoe manufacturer, I worked in the shop some, but went to school most of the time; and at the age of seventeen went into a bank. I remained in banks twenty-three years about, in the various capacities of clerk, teller, and cashier, and until I became a broker.

Cross-int. 10. Will you look at Exhibit R. C. P., 51, and say whether, contrasting it with the signatures to the bills of sale you saw, it does not confirm your opinion of the want of sameness which you have mentioned in your examination in chief?

Ans. I think it does.

Cross-int. 11. Did you find this want of sameness in the first instance in examining the exhibits mentioned in interrogatory thirteen, and was this the first thing that impressed you upon examining the papers?

Ans. I did. I think that was the first thing that struck my mind.

Cross-int. 12. And, because you found a nearer sameness in Nos. 1, 10, and 15, you made up your mind, did you not?

Ans. I did.

Cross-int. 13. Who first called upon you upon this subject?

Ans. Mr. Eliot.

Cross-int. 14. What did he say to you? Did he tell you who advised him to call?

Ans. He came to me as a stranger, introduced by Thomas Lamb, president of the New England Bank. He asked some general questions as to my former business and experience in signatures.

Cross-int. 15. Were you informed by him that you were desired to examine some papers, the signatures to which were supposed to be forged, or to that effect?

Ans. I think he said I might be called on to give an opinion as to the genuineness of certain signatures.

Cross-int. 16. When did you first know whose signatures they were or purported to be?

Ans. I think he did not give any names. I first knew at the circuit court clerk's room; within a week it was after I saw Mr. Eliot.

Adjourned to Oct. 8, at 10½ a. m.

821 OCT. 8, 1866.

Cross-examination resumed:

Cross-int. 17. The first time your eye lighted upon F. W. P., No. 10, did you or not discover that the letters of the signature had been several of them retouched by a pen after they were originally written or during the writing thereof; and did not that at once lead you to the opinion that the signature had been traced?

Ans. I discovered that appearance. I considered it an additional proof, but not conclusive.

Cross-int. 18. Was not that the first paper you examined; if not, which was?

Ans. I cannot state; my impression is that Nos. 10 and 15 were both opened at the same time as well as No. 1.

Cross-int. 19. And was not that retouching of the pen the first thing that attracted your attention?

Ans. I think it was not prominent at first.

Cross-int. 20. It is not obvious, then, is it?

Ans. Not entirely.

Cross-int. 21. Did you examine any of the other papers placed in your hand to find if the letters to the signatures to any of them had been retouched with the pen?

Ans. I think I did.

Cross-int. 22. Did you find them so retouched in numerous instances; and was that the first purpose for which you examined them? I refer to Exhibits R. C. P., 1 to 30, and 32 to 51, inclusive.

Ans. I did not find them in numerous instances retouched. It was one of the first purposes, or rather I had this in view in satisfying myself as to the tracing of the others.

Cross-int. 23. Had you been told that the bills of sale had been retouched in forty instances; and did you as many? If not, how many?

(Objected to for form and substance.)

Ans. I had not been so told. My impression is, I saw but one or two. I did not examine nearly all of them.

Cross-int. 24. Did you find any such retouches in F. W. P., 15?

Ans. Slight, if at all.

822 Cross-int. 25. Look at it now, and tell me what letters of that signature have been retouched, if any.

Ans. The upper loop of the S, the loop of both l's, a in Howland—that is all.

Cross-int. 26. You feel as confident of this last statement of yours, do you not, as you do of any part of your testimony?

(Objected to for form and substance.)

Ans. Not so confident as in regard to No. 10.

Cross-int. 27. Why are you not as confident? Do you mean to say that you have doubt whether your statement is correct?

Ans. Because it is not so bold a hand as No. 10. I am doubtful about the retouching in No. 15.

Cross-int. 28. You think, then, the signature to No. 10 is a bolder handwriting than No. 15, do you?

Ans. It is a heavier hand.

Cross-int. 29. What did you mean by saying it was bolder? Do you mean written in a more plain, decided, current hand, or not?

Ans. I mean simply that there is more ink used.

Cross-int. 30. Is that what is usually meant by a bold hand?

(Objected to for form and substance.)

Ans. Ordinarily, I should say.

C. A. PUTNAM.

823 *Deposition of George N. Comer.*

FRIDAY, *Oct.* 12, 1866.

I, George N. Comer, aged fifty years, a resident of Boston, in the county of Suffolk, on oath say:

I am the president of the Commercial College, in Boston, the object of which is commercial education generally, including penmanship, book-keeping, engineering, navigation, and telegraphy.

(In answer to interrogatories by respondents, witness testifies:)

Int. 1. State whether or not you have given attention to the study and comparison of handwriting, as well as the teaching of it; and, if so, to what extent.

Ans. I have made the critical examination and comparison of handwritings a study for twenty-five years past. I have been consulted as an expert in handwriting continually during the whole of that time, and have testified as an expert in various courts of this and other States upwards of two hundred times, and have been consulted in probably a dozen cases for every one in which I have testified.

Int. 2. Please to look at the exhibits marked F. W. P., 1, and F. W. P., 10, and say when and where you first saw those papers.

Ans. At the clerk's office of the United States court-house in this city, and I think about the early part of August.

Int. 3. State what examination, if any, you made of them, and if you formed any opinion at that time; and, if so, what it was.

(Objected to on the ground that the question is not open on the state of the pleadings in this case, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and not waiving these objections.)

Ans. I first examined No. 1, and I found that the words "first page" on that page, the words "page" and "third," and the comma after it, and the words "also, executor of the 2d page of this will," on the second page, were written after the other part of the
824 writing, and in a different colored ink. I then examined No. 10, and found that the ink of that writing was the same in color as that of the interlineations which I have mentioned in No. 1. I compared the signatures to No. 1 and 10, and came to the conclusion that they were not written by the same person.

Int. 3. You speak of interlineations on F. W. P., 1; will you look at the words "eleventh" and "January" in that document, and say whether or not in your judgment they were written at the same time with the body of the document?

(Objected to as above.)

Ans. I examined these words at that time, and my opinion was and is that they were written in after the other writing.

Int. 4. When you speak of "third" as being added after the writing of the body of the document, please indicate to the magistrate which of the words "third" you refer to.

(Objected to as above.)

Ans. The "third" in the third line from the top.

Int. 5. Whether or not, at the time of your first examination, the papers marked R. C. P., 50, and R. C. P., 51, were seen by you?

Ans. They were not.

Int. 6. Whether at the time of your first examination of these papers anything was stated to you in relation to the object or purpose for which the examination was to be made?

(Objected to as incompetent.)

Ans. There was not. I did not know anything of the case, or who Judge Thomas appeared for.

Int. 7. Have you made subsequent examinations of papers F. W. P., 1, and F. W. P., 10? and, if so, indicate to what extent.

(Objected to as to the third interrogatory.)

Ans. I did make examination of these papers a few days after the first examination very carefully, perhaps one or two hours. I have examined them several times since, have made careful examinations, and I took fac-simile copies of the signatures.

Int. 8. Please look at Exhibits F. W. P., No. 15, and R. C. P., No. 1 to 30, and No. 32 to 51, inclusive, and say whether you have examined them also; and, if so, to what extent.

(Objected to as above.)

825 Ans. I have examined them all with great care, comparing the signatures on the bills of sale, the deed, and power of attorney with each other, and then F. W. P., No. 15, with those signatures. I made fac-similes of several of the papers R. C. P., 1 to 51, for the purpose of comparison, and to familiarize my mind with the signatures of Sylvia Ann Howland as a standard of comparison.

Int. 9. Looking now again at Nos. 10 and 15 signatures, and with the aid of your previous examinations, assuming the signature to No.

1, F. W . P, to be genuine, state what conclusion, if any, you have formed as to the genuineness of the signatures to Nos. 10 and 15.

(Objected to as above.)

Ans. My opinion is that the signatures on 10 and 15 are not the genuine signatures of the person who signed the name Sylvia Ann Howland on No. 1.

Int. 10. In your judgment did or did not the hand that made the signature to No. 1 make the signatures to No. 10 and No. 15, all F. W. P. ?

(Objected to as above.)

Ans. The hand that made the signature to No. 1, F. W. P., did not make the signatures on Nos. 10 and 15, F. W. P.

Int. 11. State how, in your opinion and judgment, if you have formed any, signatures to F. W. P., No. 10, and F. W. P., 15, were made.

(Objected to as above.)

Ans. My opinion is that they were both copied from the signature on No. 1.

Int. 12. How copied ?

(Objected to as above.)

Ans. No. 10 was copied by having been placed over No. 1, and written over with a lead-pencil wetted, or some instrument of the kind, and then written over with pen and ink. No. 15 was written over the signature on No. 1 without the intervention of wetted pencil or similar material.

Int. 13. State the degree of confidence you have in the conclusion expressed by you that the signatures to F. W. P., 10 and 15, are not genuine.

(Objected to as above.)

Ans. I am as confident as if I had seen them written.

Int. 14. State the reasons which have led you to the con-
826 clusion that you have stated, that the signatures to Nos. 10 and 15 are not genuine, but are copied or traced from signature to No. 1.

(Objected to as above.)

Ans. Having made myself familiar with the handwriting of Sylvia Ann Howland from the examination of the papers R. C. P., 1 to 30, and 32 to 51, inclusive, and also the signature to F. W. P., No. 1, I found that, in the first place the signatures to all the documents, R. C. P., 1 to 51, had a tendency, notwithstanding there was a ruled line for them to be written upon, to drop down below the line at the finish of the signature. I found that in No. 1, F. W. P., that was not the case; that it was finished very much higher up than at the commencement. I found also that there were peculiarities in the signature of No. 1 which I did not find in that of any of the other genuine signatures. Those peculiarities I found were carefully copied in Nos. 10 and 15. I found by placing signatures 10 and 15 over No. 1 that they exactly corresponded in the form and spacings of the letters, but that in the shading they did not correspond. I found, with the aid of a powerful microscope, that the ink did not stain the paper in Nos. 10

and 15 as it had in No. 1, and in the other exhibits, R. C. P., 1 to 51. I found, with the aid of a microscope in No. 10, the original tracing marks with pencil or other material, all of which have not been covered. I find that in the capital letter A in Ann, No. 1, that the hand had dropped over at the top of the letter to the right, forming an angle, and that mark I find purposely and carefully reproduced in No. 10; and I find the same in No. 15, but not so strong; but I find that the lower right-hand stroke of same letter in No. 15 has been carefully retouched, or rather, the ink having given out in the pen at that point, it is recommenced with a new dip of ink. I find that the peculiarities in the line of the writing in No. 1 are carefully reproduced in Nos. 10 and 15; that by taking a fac-simile on rice paper, which I did from each of these signatures, they will one fit over the other precisely in space and form of letter, although not in the shading, which they will not do over any of the other genuine signatures examined by me.

Int. 15. State whether you have yourself made the experiment, and, if so, how frequently, to write your own signatures so as to be alike in form and structure; and, if so, with what success?

(Objected to as above.)

827 Ans. I have made the experiment very frequently, thousands of times I have written the signature, and have never been able, without tracing, to make one of the signatures compare with any of the others as closely as these signatures on No. 1, 10, and 15 compare.

Int. 16. Have you or not ever seen the experiment inquired of last tried by others, and, if at all, how often, and with what result?

(Objected to as above.)

Ans. I have repeatedly seen it tried, and have seen different persons write their own and other signatures, as many of each as one hundred at one time, and never found an instance in which any one of those signatures would fit over another of them without tracing as closely as these three signatures on Nos. 1, 10, and 15 fit over each other.

Int. 17. Have you or not examined the signatures to the Exhibits R. C. P., 1 to 51, inclusive, to ascertain whether there is or not between any two of then like identity of form and structure which you say you find in 10 and 15 with 1, F. W. P., and, if so, with what result?

(Objected to as above.)

Ans. I have examined the signatures of Mr. Robinson, Mr. Mandell, and Sylvia Ann Howland, and taken several fac-similes of each on rice paper by tracing, and in no instance can I find any one of either of those signatures which will fit over any other of them as closely as Nos. 10 and 15 fit over No. 1, F. W. P.

Int. 18. State whether or not there is any approach or approximation, and, if there is, how near, between the signatures on the Exhibits R. C. P. referred to, as compared with the identity between Nos. 1, 10, and 15.

(Objected to as above.)

Ans. There is not any approximation as compared with Nos. 1, 10, and 15.

Int. 19. State whether, in your examination of Exhibits R. C. P., 1 to 51, you discovered that any of the signatures of Sylvia Ann Howland thereto had been retouched; and, if so, how the retouching in such exhibits resembled or differed from the retouching which you observed in the purported signatures to Nos. 10 and 15?

(Objected to as above and as assuming a fact not proved.)

Ans. I did not find any evidences of retouching in the signatures of Sylvia Ann Howland; I did find places where the pen appeared to have failed to give out the ink, and where the writing had
828 been recommenced. In one case the entire letter S had been formed, and then another one, perfectly distinct from the first, written after, as though the person writing it was near-sighted or had not seen the mark or had been interrupted after making the first letter. The retouching in 10 and 15, F. W. P., is perceptible with the microscope, carefully done to imitate the appearance of the signature to No 1.

Int. 20. State in what sense you use the word "retouching."

(Objected to as above.)

Ans. I use it in the sense of making a writing already written more perfect, or more like some other writing than it would have been without it. The mere continuing of a broken letter from the ink not flowing at first I do not consider retouching.

Int. 21. Please take now F. W. P., No. 10, and indicate in the signature thereto the marks, if any, of retouching.

(Objected to as above.)

Ans. There are marks of tracing all through the signature, which can be more clearly seen with the use of a more powerful microscope than the one I have here; but the tracing marks which have not been covered are discernible in the upper part of the o, part of a in Sylvia, in the finish of the letter n in Ann, in the loop of the upper part of H, in the side mark of a in Howland. I believe that covers all that is discernible with this glass. But the retouching in A is perceptible from the fact that the letter had been formed up nearly to the top on the left-hand side, and then the pen had been put down again at that point, carried up to the top, taken off; then it had been put down again, and the mark carried a short distance, almost at a right angle, and then stopped; and then, at that point, the pen put down again, and the remainder of the A finished.

Int. 22. Now take F. W. P., 15, and indicate any marks of retouching, tracing, or mending, which you discover in the purported signature thereto, if you discover any?

(Objected to as above and as assuming a fact not proved.)

Ans. My opinion is that this signature is written over No. 1 without the intervention of pencil or other tracing, and is consequently more flowing; but I find that in A the pen has been redipped after the first part had been formed, carefully put down at that point, and the letter finished. The whole signature bears the evidence
829 to me of having been written over or copied from another,

and does not have the character which the genuine signatures have.

Int. 23. You state that in your first examination of these papers you saw F. W. P., 1, and F. W. P., 10; what effect upon your mind as to the genuineness of these signatures was produced, if any, by F. W. P., 15, being brought forward?

(Objected to as to interrogatory third.)

Ans. It corroborated my first opinion that No. 10 was a forgery.

Int. 24. Please look at the body of the writing in F. W. P., 1, 10, and 15, and state whether or not you see in the handwriting of the bodies of those instruments any indication of the hand that made the signatures to Nos. 10 and 15, F. W. P., or otherwise?

(Objected to as above and for form. Question waived.)

Int. 25. Please look at the body of the writing in F. W. P., 1, 10, and 15, and state whether or not, from the examination of those papers, you are led to any conclusion in regard to the hand that made the signatures to Nos. 10 and 15.

(Objected to as to interrogatory third.)

Ans. From the examination previously made of these three papers, I came to the conclusion that the person who wrote the bodies of those papers also wrote the signatures to Nos. 10 and 15.

Int. 26. State what are the indications in the body of those papers which lead you to this result as briefly as you can.

(Objected to as above.)

Ans. I find from examination under the microscope that the ink in the bodies of these three papers has stained the paper in precisely the same way as it is stained in the signatures 10 and 15, and differently from that of any of the genuine signatures; and I find that the form or the shading of the letters in the signatures to 10 and 15 have retained the form and shading of similar letters in the bodies of these papers, and different from the form and shading as combined of the genuine signatures.

Int. 27. You use the phrase "stained the paper;" what do you mean by that word in that connection?

(Objected to as above.)

Ans. I find it very difficult to explain. It is a matter which
830 nothing but long experience in the use of powerful glasses has enabled me to arrive at. The writing of no two persons stains the paper—that is, produces the same microscopical effects—in the same way. A person much used to the use of the microscope will discover these effects, although he cannot explain them.

Int. 28. Point out, if you please, if there be such, some of the more prominent characteristics of the handwriting in the bodies of these instruments, which you say you discover in the signatures to Nos. 10 and 15.

(Objected to as above.)

Ans. The characteristics are retained all through in almost all the letters. In "Howland," 10 and 15—in both I refer to the signatures, of course—the o, the w, the connection of o with the w, the l and its connection with the w, the a and the connection with

the n, its connection with a, and the d, and the form of all these letters—all have their counterparts in the bodies of these papers. The words "Sylvia" and "Ann," in the bodies of these three papers, have the characteristics that the same words have in the signatures of 10 and 15, excepting in the break or piecing parts in "Sylvia," and the "A" in "Ann."

Int. 29. If, from the examinations you have made, you have formed an opinion or conclusion what hand made the siguatures to Nos. 10 and 15, state it.

(Objected to as above.)

Ans. The same hand that wrote the bodies of Nos. 1, 10, and 15, F. W. P.

Int. 30. In these examinations which you have made, or before such examinations, had you been informed by any one who it was that wrote the bodies of those papers?

(Objected to as above.)

Ans. I had no intimation whatever from any source. I did not know what the case was, or who were engaged in it, [and supposed when Judge Thomas first presented the papers, from what I gathered from the papers themselves, that he was for the other party from that which I afterwards found he was. I gave him my opinion on that supposition.]

(Clause in brackets objected to by complainant as irresponsive and as otherwise incompetent.)

831 Int. 31. What, if anything, led you to institute the comparison of which you have testified, between the handwriting in the bodies of 1, 10, and 15, and the signatures to 10 and 15?

(Objected to as above.)

Ans. Finding that 10 and 15 were undoubtedly tracings from No. 1, I then found, in examining the bodies of the three papers, the characteristics which I have described, and which convinced me beyond any kind of doubt that the same hand which wrote the signatures to 10 and 15 wrote the bodies of the three papers.

Int. 32. Did you see the complainant, Miss Robinson, in this room this morning, while this deposition was being taken? Did she ever make any application to you in relation to instructions in handwriting, and if so, when?

(Objected to as immaterial.)

Ans. I saw a lady, and the only lady in this room this morning, whom I was afterwards informed was Miss Robinson, whom, upon her coming into the room, I immediately recognized as a lady who had called upon me at my office some time in the summer of the present year, and made inquiries about being instructed in penmanship.

(The examiner here notes by consent of counsel, that the only lady present during the taking of this deposition up to the present time was Miss Robinson, the complainant.)

Int. 33. If you have any means of fixing the date more nearly, please do so, and state if she called only once or more than once.

(Objected to as above.)

Ans. I know it must have been since the first of June, from an alteration which I have had made in the business office. It was undoubtedly between that time and my first interview with Judge Thomas upon this subject-matter. She called twice, once by herself, and once with another lady.

Int. 34. If it were shown, or should appear in evidence, that the person who wrote the signature to No. 1, wrote seldom, and sometimes with difficulty, what effect, if any, would it have upon the opinion and judgment you have expressed, that the signatures to No. 10 and 15 were not written by the same hand that wrote No. 1?

(Objected to as to interrogatory third.)

832 Ans. That circumstance would strengthen that opinion, if anything; but the fact appeared so palpable to me as not to require such confirmation—the fact that the person who wrote No. 1 did not write 10 and 15.

Adjourned to Saturday, Oct. 13, at 9½ a. m.

SATURDAY, *Oct.* 13.

Cross-examination:

(The cross-examination which follows is by S. Bartlett, esq., of counsel for complainant, and, as before stated, is de bene esse.)

Cross-int. 1. You have a theory, have you not, that you can tell the age of writing, and, if so, by what means?

(Objected to as immaterial.)

Ans. I have no such theory.

Cross-int. 2. Then you mean to say, do you not, that you cannot distinguish writing made by a party at one period from that made at another, except by the difference in the handwriting?

(Objected to as assuming what witness has not said, and immaterial.)

Ans. That depends upon circumstances. If all the writing on one paper had been made at one time, and all the writing on another paper at another time, I might not be able to state which paper had been written first.

Cross-int. 3. Then it depends on the difference of handwriting, does is not?

(Objected to as above.)

Ans. Not altogether.

Cross-int. 4. What does it depend upon?

(Objected to as above.)

Ans. In addition to the handwriting, there is the variation in the color of inks and the relative positions the writings occupy.

Cross-int. 5. Can you tell by these which is the oldest?

(Objected to as above.)

Ans. I can in some cases.

Cross-int. 6. How?

(Objected to as above.)

Ans. If I find a document written throughout with one ink, and I find other ink introduced in places where I find, with the aid of the microscope, that the introduced words have lapped over

833 and written after the first ink must have dried, I can then distinguish which was written first.

Cross-int. 7. That is all the answer you can make to the last two preceding questions, is it?

(Objected to for form and substance.)

Ans. I do not know that it is all the answer. Everything depends so much upon the different subjects under investigation, which are continually varying.

Cross-int. 8. But it is all the answer you can now make, is it not?

(Objected to as above.)

Ans. It is all the answer generally.

Cross-int. 9. If you can make any answer specially—that is, what I have been inquiring for—will you make it?

(Objected to for form and substance and as assuming a state of things not appearing.)

Ans. If a specific case is given to me, I may be able to give a special answer.

Cross-int. 10. Take the present case; what special answer have you to make in regard to that—that is, as to the age of handwriting?

(Objected to for form and substance.)

Ans. I cannot answer that question without knowing what part of the case it alludes to.

Cross-int. 11. You have examined, have you not, and carefully stated all the cases which your alleged scrutiny has developed, of the differences of ink in every part of the documents F. W. P., 1, 10, and 15, and have they or not been your guide in determining the different dates at which portions of those writings were made?

(Objected to as assuming throughout facts not appearing.)

Ans. I have carefully examined the documents referred to in this case. In some cases they hav been my guide in determining which part of the writing has been written first. I do not know that I have carefully stated every instance of differences in the color of ink in these documents. I have answered the questions as they have been put to me, with the intention of answering fully, although I may have omitted some instances.

Cross-int. 12. Will you now take those three documents and state every instance in which the color of the ink in the bodies or
834 signatures differs from the others—comparing each with the others and with itself?

(Objected to as cross-examination upon a matter not opened in chief, the examination in chief being confined to additions to No. 1.)

Ans. I decline making any fresh investigation without having time and place and circumstances allowed me to make such investigation, which I cannot do here.

Cross-int. 13. Have you not just sworn that you have already made a careful examination of these documents in these respects; and, if so, will you give us the results of that examination?

Ans. I have already given the results of the investigation; but to answer the previous question would require great time, carefully going over and writing down each difference which I might find.

Cross-int. 14. You have given us, then, have you not, all the differences in the color of the ink which the careful investigation referred to in your answer to the eleventh cross-interrogatory enables you now to give?

(Objected to as assuming a fact not proved.)

Ans. I have given the prominent differences, although I may not have given every slight difference wherein the ink in one paper differs from other ink in the same or in the other papers.

Cross-int. 15. Of course you compared carefully the signatures of each of these three documents with the bodies and with each other as to the difference in the color of the ink, did you not?

Ans. I did.

Cross-int. 16. Were you a witness in the case of Howe vs. Thompson, before Mr. George S. Hillard, in a case of alleged simulated or forged signatures?

(Objected to as immaterial and for form.)

Ans. I was a witness in a case before Mr. Hillard, but I do not now remember who the parties were, or what was the nature of the case.

Cross-int. 17. You mean to say, do you, that you do not remember whether it was a case of forgery or not?

Ans. I really do not remember.

Cross-int. 18. So that you cannot tell whether or not you were called in that case as a witness in relation to handwriting?

(Objected to as before and as immaterial.)

835 Ans. I think I was; but I am called in so many cases as an expert in handwriting and accounts, that I cannot possibly remember particular cases unless my attention is sufficiently drawn to it, and in this case have no rememberance whatever other than of having been called. I cannot remember either the parties or the counsel, excepting that I believe Mr. Bartlett, the gentleman here, was one.

Cross-int. 19. Do you remember enough to know whether or not Mr. Southworth, the photographer, was also called as a witness in that case, and that you did not agree?

(Objected to as before and as immaterial.)

Ans. I really do not.

Cross-int. 20. Do you remember enough to state whether or not you gave your opinion based largely upon your microscopic investigations?

(Objected to as before and as immaterial.)

Ans. I do not.

Cross-int. 21. Do you remember enough to know whether you refused to give your opinion as to the genuineness of papers produced by the party opposite to that for which you were called?

(Objected to as above.)

Ans. I have no remembrance whatever of the case, or whom the parties were.

Cross-int. 22. Do you remember whether you gave your opinion with the same unhesitating confidence with which you have given it in this case?

(Objected to as above.)

Ans. As already stated, I have no remembrance of the case except that there was such a case.

Cross-int. 23. And yet your testimony in that case was given within about a year, was it not?

(Objected to as above.)

Ans. I really do not know; it seems to me much longer since I have been in Mr. Hillard's office in any case.

Cross-int. 24. Were you examined as a witness in the case of Jordan, in equity, vs. the Agawam Woolen Company?

(Objected to as above.)

Ans. I believe I was.

Cross-int. 25. Was the subject the genuineness of handwriting?

836 (Objected to as above.)

Ans. I do not now remember.

Cross-int. 26. You do not remember enough to know, do you, whether upon cross-examination you were asked as to the similarity of ink in the documents under examination?

(Objected to for form and substance.)

Ans. I do not; and I wish to state that it is my effort not to retain any more of the cases that come before me on my mind than possible.

Cross-int. 27. That examination of you as a witness was less than a year since, was it not?

(Objected to for form and substance.)

Ans. I really cannot tell.

Cross-int. 28. Can you refresh your memory by recalling the fact that upon cross-examination you declined to give an opinion as to the similarity of ink in which papers were written in these words, "I could not give an opinion without having more time and a different frame of mind, without the intervention of counsel, from an inspection of the book here?"

(Objected to for form, substance, and assuming facts not proved.)

Ans. I do not remember it, [but think it possible. If I had the original papers before me I should perhaps remember more fully.]

(Objected to by respondents, so far as in brackets, as irresponsive.)

Cross-int. 29. You do not remember, then, whether or not you repeatedly refused during that cross-examination to give your opinion as to the similarity in the color of ink, do you?

(Objected to for form and substance.)

Ans. I do not.

Cross-int. 30. How long have you been employed upon this present case; and have you worked arduously and continuously or slightly in this matter?

Ans. I have been employed at different times since the early part of August, and when so employed have given it careful attention.

Cross-int. 31. Have you ever bestowed as much care, attention, and labor upon any other case?

(Objected to as immaterial.)

Ans. Undoubtedly.

837 Cross-int. 32. What is the largest compensation you have ever received in any similar case?

(Objected to as immaterial.)

Ans. It is difficult for me to remember; I received a thousand dollars in one case. I think it was the State of Illinois vs. Hodge.

Cross-int. 33. Was it a case of forgery?

(Objected to as immaterial.)

Ans. I don't remember; I think it was detecting anonymous letter or letters by comparison of hand.

Cross-int. 34. Don't you remember enough of the case to be confident of this?

(Objected to as immaterial.)

Ans. I do not.

Cross-int. 35. Don't remember who employed you or the character and extent of your services, do you?

(Objected to for form and substance.)

Ans. I do, who employed me—Mr. Hodge. It was a peculiar case, but I do not remember the details. I was employed sometime here in Boston. I then went to Chicago and gave the case my attention there. I believe I was engaged in the whole about sixteen days.

Cross-int. 36. Where did Mr. Hodge call upon you?

(Objected to as immaterial.)

Ans. In Boston.

Cross-int. 37. And did you give him an opinion in his favor when he called on you?

(Objected to as immaterial.)

Ans. I don't remember, but think I could not, as I did not see some of the papers till I got to Chicago.

Cross-int. 38. Then he got you to go to Chicago without having any intimation of what your opinion was, did he?

(Objected to as immaterial and as asserting a fact not in evidence.)

Ans. I remember now that it was so; and that, at the time, I told Mr. Hodge that upon investigation of the papers I might not be able to aid him.

Cross-int. 39. But after you went to Chicago you testified in his favor, did you not?

(Objected to as immaterial.)

838 Ans. I testified as to what I found upon the investigation.

Cross-int. 40. That was in his favor, was it not?

(Objected to as immaterial.)

Ans. It was.

Cross-int. 41. Did you agree upon the compensation before you went to Chicago?

(Objected to as immaterial.)

Ans. I did.

Cross-int. 42. What is the next largest compensation you have received for service similar to that in this case?

(Objected to as immaterial and as assuming a fact not proved.)

Ans. I really do not remember without referring to my books; I really cannot tell.

Cross-int. 43. Was it over five hundred dollars?

(Objected to as immaterial.)

Ans. I remember in one case I received a fee of ($500) five hundred dollars, and in all cases where I leave the city my expenses for travel and at hotels are paid in addition to the fee.

Cross-int. 44. Do you mean to say that after you had given to Mr. Hodge the reply you have stated in answer to the thirty-eighth cross-interrogatory, he thereupon made the bargain with you stated in your answer to the forty-first cross-interrogatory?

(Objected to as immaterial.)

Ans. I do; and I remember the circumstance from the fact that his son was a student with me at the time, and went on with me to Chicago, and it was frequently the subject of remark between the father, the son, and myself that my journey might be of no use to them.

Cross-int. 45. These remarks were made after you got to Chicago, were they not?

(Objected to as immaterial.)

Ans. No, sir. Here in Boston, and on the road.

Cross-int. 46. How many days do you think, on the whole, you have been employed for the respondents in this case?

Ans. I can't t[illegible] without reference to my books, but think on ten or twelve different days, or thereabouts.

Cross-int. 47. You have made an entry on your books of each of those days, have you?

839 Ans. I think I have made an entry on my daily diary of each of the days I have been so employed on the day of the entry.

Cross-int. 48. Will you refer to your books and give the dates?

Ans. I will. I will annex a transcript.

Cross-int. 49. You state in your answer to the seventh direct interrogatory that you took fac-simile copies of the signatures F. W. P., 1, 10 and 15. Did you use those for the purpose of forming your judgment or opinion in this case?

Ans. I said so in answer to some interrogatory, but what one I don't know. I did use those fac-similes as one of the means of corroborating my previously formed opinion.

Cross-int. 50. Did you make fac-similes of several of the papers marked R. C. P., 1 to 51, and for what purpose?

Ans. I did; for the purpose of comparing one signature with others, and seeing if any one would fit over any other with anything like the closeness with which the signatures to F. W. P., 1, 10, and 15 fit over each other.

Cross-int. 51. How many of these latter fac-similes did you make?

Ans. Of the three signatures on the bill of sale I made altogether thirty or forty fac-similes. I might have made ten or a dozen of each.

Cross-int. 52. And then you superimposed these fac-similes upon the fac-similes of 1, 10, and 15, F. W. P, did you not?

(Objected to as assuming a fact not proved.)

Ans. I did some of them, and also upon the originals of Nos. 1, 10, and 15.

Cross-int. 53. How many fac-similes did you make of 1, 10, and 15?

Ans. One of each.

Cross-int. 54. By means of the comparison of these fac-similes you made your principal study, did you not?

Ans. I did not.

Cross-int. 55. Where are those fac-similes now?

Ans. Some of them in my pocket, and some in my office.

Cross-int. 56. Will you produce them all, and annex them to your deposition?

(Objected to as immaterial.)

Ans. I will produce all that I can find. (Witness produces exhibits hereto annexed, marked R. C. P., fac-simile 1st; R. C. P., fac-
840 simile 2d; R. C. P. fac-simile 3d; R. C. P., fac-simile 4th; R. C. P., fac-simile 5th.) These are all I can readily find.

Cross-int. 57. In answer to the fourteenth direct interrogatory you have stated, as one of the reasons that have led you to the conclusion that signatures to Nos. 10 and 15 are copied or traced from the signature to No. 1, that there are peculiarities to the signature of No. 1 which you did not find in that of any of the other genuine signatures. Will you state in detail, and with the greatest care and minuteness, every such peculiarity?

Ans. The peculiarities I alluded to were the entire variation from the line in No. 1 from that of any of the others. In the bills of sale a ruled line has been prepared for the signature, but in all those cases the tendency of the hand is to drop from the left to the right. In No. 1 the tendency to rise from the left to the right is very marked, the centre word, "Ann," being higher than "Sylvia" and not as high as the "d" in "Howland." One peculiarity is in the formation of "A." The up-stroke of that letter in F. W. P., No. 1, having been made, the hand seems to have trembled or turned over, from being tired, and formed a short mark almost at a right angle from the first mark. I have not been able to find anything like this in any of the other genuine signatures—the nearest approach to it being in R. C. P., No. 8. And I mean the general appearance of the signature on No. 1, as compared with the other signatures.

Cross-int. 58. I do not ask you for your opinion of the general appearance. Please answer the question put to you.

Ans. I have given all the details that I now think of.

Cross-int. 59. And do you mean to say that the facts thus given in detail by you, in answer to the fifty-seventh cross-interrogatory, ought to influence the mind of any fair man in charging forgery and tracing upon another person?

(Objected to as assuming what witness has not stated.)

Ans. Not taken by itself; but, in connection with what I had previously stated and pointed out, I do not think there is a fair man living who would not be convinced that a forgery had been committed.

Cross-int. 60. You mean to say then that it is of substantial importance, do you? If not, why did you set it forth?

(Objected to as not appearing what "it" refers to. Question waived.)

841 Cross-int. 61. Do you mean to say then that these facts stated by you in detail, in answer to the fifty-seventh cross-interrogatory, are of substantial importance, do you? If not, why did you set that reason forth in the fourteenth direct interrogatory, which was referred to in the fifty-seventh cross-interrogatory?

Ans. I did, and do consider them of very great importance taken in connection with the other evidences of the fraud.

Cross-int. 62. You have stated that, in your opinion, the signature to F. W. P., No. 10, had been written over with a lead-pencil wetted, or with some instrument of the kind, and that the signatures of No. 15 was written over the signature of No. 1, without the intervention of wetted pencil or similar material; and you feel as great confidence in this part of your opinion, do you not, as in any other portion of the opinions you have given in any other portions of your testimony?

Ans. I do.

Cross-int. 63. Will you now state each portion of signature to No. 10 which bears the mark of a wetted pencil, or some instrument of the kind? Give the letters where it is to be found.

Ans. Every letter, under the microscope, bears the evidence of the tracery by the use of a wetted pencil, or some other similar material, before the ink had been put on to it; and in letters "S a" in "Sylvia," the latter part of "n" in "Ann," (the last "n,") the upper loop of H, the "a," and the continuation of "a" to "n" in "Howland," all show the marks of the pencil, or other material, which have not been covered by the ink.

Cross-int. 64. How do the other letters that have been covered, as you say, show that they have been so traced? What appearance shows this?

Ans. I see the marks underneath the ink, the ink having been painted over and presents the appearance something like what may be seen in a sign which has been painted over a previous name—the paint covers it, but not so completely as to entirely obliterate it; and that is the case with the writing of this signature. I trace these very marks through the letters, and find in some that I have named places where the first mark has been continued without being at all written over.

Cross-int. 65. What is the size of the microscope you are now using?

842 Ans. I believe the technical term is a microscope of 30 diameters.

Cross-int. 66. Will you now state what letters in the bodies of the documents F. W. P., 10 and 15, have the form and shading of similar letters in the signatures to those papers? Give them in detail.

Ans. Most of the letters "d;" most of the letters "n;" most of the letters "l;" the "w," the "o," the "n," the "a," the "i,"

the "v"—those are the letters. Most of those letters in the bodies bear resemblance, in form and shading, to the same letters in the signatures.

Cross-int. 67. So that upon this supposed similarity, you have ventured the opinion, have you, that the person who wrote the bodies of those instruments also wrote the signatures to Nos. 10 and 15?

(Objected to as assuming a fact not in proof.)

Ans. I have ventured the opinion that the person who wrote the bodies of Nos. 10 and 15 also wrote the signatures to those papers, but not on the above data alone. I formed my opinion from a careful comparison of the writing of the bodies of these papers with the signatures to them, both as to form, shading, and the effect the ink had upon the paper, under the microscope.

Cross-int. 68. Then form and shading, and the effect of the ink on the paper, are the foundation of your opinion, are they?

(Objected to as above.)

Ans. In connection with the character of the writing, they are.

Cross-int. 69. Give us the details of the character of the writing where they compare with each other, if you can give any other than you have stated.

Ans. I cannot more fully explain.

Cross-int. 70. You have given, then, all the details you can, have you?

Ans. As I have before stated, I find it extremely difficult to explain all the appearances under the microscope which go to assist me in forming my opinion. I think I have explained as fully as I can.

Cross-int. 71. Then you see things, do you, which are incapable of being stated in language?

Ans. From experience I do find appearances under the microscope which I do not find myself capable of explaining more fully than I have already done.

Cross-int. 72. Then upon those unexplainable appearances,
843 which nobody can confirm or contradict, you are willing to base, are you, a charge of forgery upon another person?

(Objected to as assuming a fact not stated by the witness.)

Ans. I think any intelligent, experienced person used to the microscope for this purpose will confirm these appearances, and it is upon these and all the other evidences that I base my opinion that a forgery has been committed.

Cross-int. 73. You feel as much confidence, do you not, in your judgment, founded upon the facts you have given in detail and these unexplainable appearances, that the person who wrote the bodies of 10 and 15 wrote also the signatures thereto, as you do in any other part of your testimony?

(Objected to for form and substance.)

Ans. I feel as much confidence from all the evidences which appeared before me, taken in connection with each other, as I could have had if I had seen the person write those signatures.

Cross-int. 74. What other evidences had you before you that the

handwriting of the bodies of those papers, Nos. 10 and 15, was the same as the signatures, besides those named in the last question?

(Objected to as assuming a fact not in proof.)

Ans. I do not remember any others than those I have already stated.

Adjourned to Monday, Oct. 15, at 11 a. m.

MONDAY, *Oct.* 15.

Direct examination resumed.

Interrogatories by respondents:

Int. 35. State whether in the examination which you made, and of which you have testified as to the color of ink and the additions to the papers, the Exhibit F. W. P., No. 15, was or was not included?

Ans. It was not. I had not seen it at the time I made the examination of the other papers, No. 1 and 10, in regard to color, and I have not examined it since for that purpose.

844 (The following interrogatory is put by respondents de bene esse:)

Int. 36. How long were you absent from home in the Chicago case, of which you have testified upon your cross-examination?

Ans. Fourteen days.

(And complainant's counsel then puts the following additional cross-interrogatories:)

Cross-int. 75. Do you hold the position of president of the Commercial College in Boston by public appointment, or is the Commercial College the title of a school set up by you, and that designation adopted by way of distinguishing it?

Ans. Comer's Commercial College in Boston is the title of an educational establishment, of which I have been at the head for twenty-five years past. At the time I was appointed president, or took the title of president, it was intended to obtain a charter of incorporation, and a petition to that effect was presented to the legislature; but it was not confirmed, no act of incorporation for any commercial college having ever been granted in Massachusetts, although such have been in a large number of the other States. Not anticipating any difficulty in obtaining the charter, we formed an association, and the members elected me president.

Cross-int. 76. Who were the members of the association? Were they all teachers employed and paid by you?

Ans. I do not now remember; one, I know, was a member of Congress, one was a doctor of literature and laws in one of the colleges of this State, some were merchants here in Boston, I believe also one or two Boston lawyers, and there was only one person who was a teacher or had been a teacher in my employment.

Cross-int. 77. Were there written articles of association; and was your appointment as president in writing?

Ans. There were. My appointment was verbal, I believe, but it was entered on the records.

Cross-int. 78. Has that association still continued after you failed to get a charter, and who are its present members?

845 Ans. It was not continued. I purchased all the interest of every person in it, and am now the only owner of the institution. I have retained the designation of president as a distinction which I think I have honorably deserved.

Cross-int. 79. What did the property you purchase out consist of?

Ans. The interests which the parties had, the good will of the establishment, and the apparatus for carrying it on, which was very valuable. The good will was a considerable part of it. The property had been put in shares.

Cross-int. 80. How many commercial colleges are now advertised in Boston?

Ans. A short time ago there were some fifteen. I don't know whether they still continue.

GEORGE N. COMER.

846 *Exhibit.*

(M—R. CP)

"I have been employed as Expert in Hand writing in the case of Mandell vs Robinson on the following days

1 11th August 1866
2 14th August "
3 16 " "
4 18 " "
5 26 September "
6 1st October "
7 2d October "
8 3rd " "
9 11th " "

MRCP

Also the several tracings on Rice paper described in Answer to 56th cross Int are enclosed in an envelope attached.

847 FRIDAY, *Oct.* 19, 1866.

Deposition of James B. Congdon.

I, James B. Congdon, of New Bedford, in the county of Bristol, aged sixty-four years, on solemn affirmation say: That I am now treasurer and collector of the said city of New Bedford, which office I have filled over eight years; previous thereto I was for thirty-two years cashier of the Merchants' Bank, of said New Bedford. I acted as teller for many years while cashier, the duties being blended. Be-

fore I became cashier of the Merchants' Bank, I acted as a teller in the Bedford Commercial Bank of New Bedford for nine months; previous to that, I was seven years in a dry-goods store; much of that time clerk and book-keeper of the establishment, which was the largest retail one of the kind in New Bedford.

(And upon written interrogatories by respondents, the examination proceeds as follows:)

Int. 1. State whether or not during the periods referred to you had or not occasion to make examination and comparison of signatures; and, if so, to what extent.

Ans. It has been a part of my duty—receiving and paying large sums of money, paying checks constantly, and receiving notes for discount—to scrutinize the signatures to such papers and bills; and I have always done so from the time I was a clerk, more or less, up to the present time. The business of the Merchants' Bank, for much of the time I was there, was very large—the largest of any in New Bedford.

Int. 2. State whether you have had or not occasion to examine signatures in cases pending in court; and, if so, for what length of time, and whether frequently or not.

Ans. I have been frequently called in case of counterfeiting before the court, having been called as a person familiar with the signatures of bills, and their genuineness. In several instances I have been called as an expert in civil cases, where the question
848 was as to the genuineness of signatures. I think I was first called as a witness in relation to counterfeit bills some forty years ago.

Int. 3. Will you now look at the exhibits shown you—that is, those marked R. C. P., 1 to 30, R. C. P., 32 to 51, inclusive; also, F. W. P., 1, 10, and 15—and state whether you have or have not examined those papers, and the signatures to them.

Ans. I have seen and examined all but those marked R. C. P. 48, 49, 50, and 51.

Int. 4. State whether upon the examination you have given to the signatures to these papers, you have arrived at any conclusion as to the genuineness or want of genuineness of the signatures to F. W. P., No. 10, and F. W. P., No. 15; and state, if you have, what that conclusion is.

(Objected to on the ground that in the state of the pleadings in this case the question is not open to respondents; also, because it does not appear that the witness is an expert in relation to the matters inquired about, and because the question is otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I have arrived at a conclusion, and that is, that if Sylvia Ann Howland signed F. W. P., No. 1, she could not have signed F. W. P., 10, and F. W. P., 15.

Int. 5. Now state whether or not the signatures to Exhibits 10 and 15 (F. W. P.) are genuine signatures or otherwise.

(Objected to as above.)

Ans. They are not.

Int. 6. Give the reasons which have brought you to the conclusion you have stated.

(Objected to as above.)

Ans. There is a resemblance between the three that I have never found in my experience, and which I do not believe to be possible ever to be found in signatures made in the ordinary course of business. My examination has satisfied me that Nos. 10 and 15 are copies of No. 1—probably by tracing. My opinion is that it is utterly impossible for any individual to write their names three times so that the resemblance may be as appears in these three. Upon this point I have no possible doubt.

Int. 7. State whether you have or not examined the signa-
849 tures to Exhibits R. C. P., 1 to 30, inclusive, and R. C. P., 32 to 47, inclusive, of Sylvia Ann Howland, and the other parties thereto, and the attesting witnesses thereto, for the purpose of ascertaining the resemblances or differences in the several signatures; and, if so, state what was the result of such examination.

(Objected to as above.)

Ans. I have made such examination; there are no two signatures alike to these forty-six instruments.

Int. 8. State the manner of such examination.

(Objected to as above.)

Ans. By taking one of the papers and, with a slip of tracing paper, tracing the first signature, Edward M. Robinson; then I laid that by and traced the same name on the next instrument, making the tracing immediately under the first tracing, and numbering both. I then took the third, and so on in the same way, until I had traced the whole forty-six signatures of Edward M. Robinson. I took the same course with each of the other two signatures of the parties to the instrument. Then I took the first tracing and compared the tracing and the signature, and went through and compared all the tracings with the first signature. I then took No. 2, and compared it with all the other tracings, that compared No. 2 with all the other signatures. I went through all the bills of sales—the whole forty-six—in the same way. I examined Thomas Mandell and Sylvia Ann Howland's signatures in the same way. The signature of Benjamin Irish, the witness, I compared first by measurement; and those signatures where the measurement at all agreed, I traced and re-examined—examining by tracing nineteen of his signatures.

Int. 9. State whether or not you have made similar examination of other original signatures; and, if so, give the manner of examination, and what was the result.

(Objected to as above.)

Ans. I have; of signatures of Isaac C. Taber, formerly mayor of New Bedford, and at one time a clerk of mine in the Merchants' Bank; George Howland, jr., formerly mayor of said city; George H. Dunbar, also ex-mayor; and John H. Perry, the present mayor; also of Sanford S. Horton, former, and Henry T. Leonard,
850 present city clerk of said city; and also my own. The num-

ber of the several signatures I examined was as follows: Of Taber's, 43 ; of Dunbar's, 101 ; of Howland's, 50 ; of Perry's, 80 ; of Horton's, 12 ; of Leonard's, 30 ; of my own, 72. The manner of examination was that given by me in the answer to the last question; that is to say, I took one hundred and one documents, for instance, upon which I knew was the signature of George H. Dunbar, traced each signature, numbered it to correspond with the document traced from; then took the first tracing and compared it with the whole of the one hundred and one signatures; took the second and compared that with all ; and so proceeded with all. I pursued the same course with all the other signatures I have named The result was that there were no two signatures of the same individual that were alike; they all differed so as to be readily perceived.

Int. 10. How many examinations and comparisons in all did you make in the manner stated by you?

(Objected to as above.)

Ans. I examined the signatures of eleven different persons, five hundred and seventy-two signatures, rendering necessary thirty-seven thousand seven hundred comparisons, I believe.

Int. 11. State whether you did or not upon such examination find any two of the original signatures examined to resemble each other as exhibits No. 10 and 15, F. W. P., you have stated, resemble No. 1, F. W. P.

(Objected to as above and for form.)

Ans. I found no such resemblance between any two of them.

Int. 12. State what you found the facts to be upon placing over each other the signatures—the five hundred and seventy-two you examined.

(Objected to as to number four.)

Ans. I found no two of them alike. They did not match. By using the tracing paper I could see exactly, and that they did not match.

Int. 13. State now what degree of confidence you have in the conclusion you have given that the signatures to Nos. 10 and 15 are not genuine.

(Objected to as last above.)

Ans. My conviction is entire and undoubted that they are not the signatures of Sylvia Ann Howland.

851 Cross-examination:

(The cross-examination which follows, by David Thaxter, esq., of counsel for complainant, is stated to be de bene esse, reserving all rights, and not waiving objections heretofore taken.)

Cross-int. 1. State when and where you first saw the papers F. W. P., 1, 10, and 15.

Ans. No. 1 and 10 I first saw at the clerk's office of the court in Boston, some three months ago, I think, but I am not quite certain of the time. No. 15 I saw this morning, at the same place, for the first time.

Cross-int. 2. How long, and in whose presence, did you see No. 15 before you came here to have your testimony taken?

Ans. I should think about fifteen minutes, and in presence of a clerk in the room, and of Mr. Eliot.

Cross-int. 3. How many times have you seen F. W. P., Nos. 1 and 10, and where, before your giving this deposition, and when?

Ans. I saw them only twice—the two times I have referred to; the first time some months since, and the second this morning, before my deposition.

Cross-int. 4. How long an examination did you make of these papers at each time, and who were present?

Ans. The first time the person who had them in custody, Mr. E. W. Hervey, of New Bedford; Mr. Thomas Mandell, of New Bedford; and, I think, a part of the time, Mr. Stetson, were present. I spent perhaps three quarters of an hour or an hour examining them. This morning a clerk and Mr. Eliot were present, and I spent about fifteen minutes examining them.

Cross-int. 5. When, where, and by whom were the forty-six bills of sale, in regard to which you have testified, first placed in your hands?

Ans. By Mr. Stetson, at my office in New Bedford, about two months ago, I think.

Cross-int. 6. When, with reference to your first seeing F. W. P., 1 and 10, were these placed in your hands?

Ans. I think it was after I had seen F. W. P., 1 and 10; I am pretty sure of this, but will not speak with entire positiveness. I cannot say how long after.

Cross-int. 7. When did you make the comparison of the
852 signatures of the parties to these instruments by tracing; and of the witness by measuring and tracing, as you have stated?

Ans. I think not far from five weeks ago.

Cross-int. 8. Did any one, and whom, request you to make such examination?

Ans. I was requested by Mr. Stetson to examine them. I cannot now say whether he suggested the mode, or whether it first occurred to me.

Cross-int. 9. Whether the suggestion came from him or you, was it made before or after these bills of sale were placed in your hands?

Ans. I am not certain upon that point. My impression is that when the bills of sale were put in my hands, it was my impression that the method of examination was understood that I should pursue.

Cross-int. 10. Was it before or after you made this examination that you made the examination of signatures referred to in your answer to the ninth direct examination.

Ans. I examined the bills of sale first, and the examination of the others followed as I had opportunity.

Cross-int. 11. Did you make the examination, referred to in your answer to the ninth direct examination, at the request of any one: and, if so, whom?

Ans. I was requested either by Mr. Mandell or Mr. Stetson—I think by Mr. Stetson—to continue the same course of examination I had pursued with reference to the bills of sale, leaving to my choice the signatures.

Cross-int. 12. To what papers were the signatures of these parties appended which you thus examined?

Ans. To warrants drawn by the respective mayors upon the treasurer of the city for the payment of money, excepting my own signatures.

Cross-int. 13. Do you remember the dates of these warrants, or were they taken indiscriminately from the papers on file?

Ans. I don't remember the dates; but I have a memorandum with me taken from the papers, which will give the dates of each. They were not taken indiscriminately, but taken so that the dates should be as near together as possible, that being the order in which they came into my office.

853 Cross-int. 14. Do you mean that you took them in the order in which they came into your office and were filed?

Ans. I took the warrants which held the signatures of the different mayors in the order in which they were filed.

Cross-int. 15. Is the Mr. Mandell referred to in your answer to the eleventh cross-interrogatory the Mr. Thomas Mandell who is one of the respondents in this case; and what, if any, acquaintance had you had with him prior to that time?

Ans. He is; and I have known him ever since I was nine years old. I have known him very intimately.

Cross-int. 16. Whether or not have you had any business relations with him in any capacity?

Ans. As cashier I frequently had occasion to have business with him, but he did not do his business at our bank, nor was he any officer thereof. I never had any other occasion to meet him on business matters.

Cross-int. 17. Is the Mrs. Lydia Congdon who is one of the legatees under Miss Howland's will related to you?

Ans. No relation. She was connected by marriage to a cousin of mine who lived in Providence—a son of my father's brother. Mrs. Congdon lives in New Bedford; her husband has been dead about fifteen years.

Cross-int. 18. Did any one, and, if so, who, ask you to come to Boston at the time you first examined F. W. P., 1 and 10?

Ans. I think Mr. Mandell.

Cross-int. 19. Before that the contract between the complainant, Miss Robinson, and these respondents had been the subject of considerable conversation and gossip at New Bedford, had it not?

Ans. It had been much talked about.

Cross-int. 20. Had you not seen it more or less frequently alluded to in the newspapers published in New Bedford?

Ans. It was alluded to several times; but I have no distinct recollection of anything down to that time in them, except the publi-

cation of certain papers after the commencement of the suit by Miss Robinson.

854 Cross-int. 21. What papers do you refer to as being published?

(Objected to for form and substance.)

Ans. I think what is called the second page of the will.

Cross-int. 22. You knew when you first saw papers F. W. P., 1 and 10, that they were papers which Miss Robinson produced in support of her claim, and that the genuineness of the signature to No. 10 was questioned, did you not?

Ans. I was told those were the papers produced, but I did not know at the time that the genuineness of the signature had been questioned.

Cross-int. 23. What, if anything, were you asked to look at when you first went to the clerk's office to look at those papers?

Ans. The request was very general that I might look at the papers and give the result of my examination.

Cross-int. 24. What examination did you understand you were to make, and for what purpose?

Ans. I understood it to be my duty, and I went there to examine the handwriting, including the signatures, the appearance of the will, and what is called the second page, manner in which they were connected with each other, and generally as to their aspect and arrangement.

Cross-int. 25. And for what purpose?

Ans. I have no recollection that the purpose was indicated to me; it might have been; it was no part of my duty to say as to what bearing the indications I might observe might have.

Cross-int. 26. Did you understand that your examination related to the question of the construction of those two papers when together or separate, or to the handwriting of the papers and signatures?

Ans. I have no recollection that anything was said to me about the construction spoken of in the question, nor particularly in reference to the handwriting; my attention was particularly directed to the manner in which the will was written.

Cross-int. 27. What do you mean by "manner in which the will was written?"

Ans. I refer to the paging manner in which the paragraphs
855 were arranged, and some filling up of spaces usually left vacant; that is all I can now recall.

Cross-int. 28. And you have stated in your last two answers all that you were particularly directed to do, have you?

Ans. I do not remember any particular directions; I believe I have mentioned all that my attention was particularly called to. I had never seen any of the handwriting of Hetty Robinson at that time.

Cross-int. 29. What led you to make that last statement, that you had never seen the handwriting of Hetty Robinson before?

Ans. Because I have been asked now with reference to the hand-

writing, and I wish it to be known that I had never seen her handwriting before, to my knowledge.

Cross-int. 30. Had you not been asked before that if you had ever seen the handwriting of Miss Robinson?

Ans. I had not.

Cross-int. 31. And had never stated to any one that you had not?

Ans. Never, to my recollection.

Cross-int. 32. And had never heard in any way that either of the papers F. W. P., 1 and 10, were in her handwriting, had you?

(Objected to as assuming a fact not stated.)

Ans. I cannot say whether I had or had not.

Cross-int. 33. What do you mean when you say your attention was called to the manner in which the paragraphs were arranged?

Ans. I mean the numbering.

Cross-int. 34. What were you asked in regard to the numbering, and what opinion did you give, if any?

Ans. I do not remember what I was asked; I said that the manner in which the word "third" was inserted over the page, on the will, was different from the manner in which the word "first" and "second" was written on the first page.

Cross-int. 35. Did you state this at the time of the examination at the clerk's office?

Ans. I did; and communicated with Mr. Hervey on the subject.

Cross-int. 36. Was that the first thing you examined at the clerk's office?

Ans. I can't say.

856 Cross-int. 37. What is your best recollection?

Ans. I think that I looked at the signatures first.

Cross-int. 38. But the purpose for which you looked at the signatures you don't now remember, do you?

Ans. I do remember.

Cross-int. 39. What was it?

Ans. I wanted to see how it looked, and whether it was genuine or not, according to my view of it.

Cross-int. 40. What duty of yours do you refer to in answer to twenty-fourth cross-interrogatory?

Ans. To give the impression faithfully which they should make upon my mind.

Cross-int. 41. And that is what you mean by your answer when you say, "I understood it to be my duty," is it?

Ans. Yes, sir.

Cross-int. 42. What impression do you refer to, which you were faithfully to give? Impression as to what?

Ans. As to the aspects of these papers, and the circumstances under which they were executed.

Cross-int. 43. With reference to what?

Ans. There had been a suit commenced, and I supposed the parties wanted my opinion as to the principal papers—as to their appearances.

Cross-int. 44. Your opinion as to their genuineness, was it not?

Ans. No; it was not as I understood it.

Cross-int. 45. What was it, as you understood it?

(Objected to as assuming that there was any definite object.)

Ans. There were no particular directions given to me. I understood that there was something peculiar in the aspect of these papers, and I described as well as I know how what those peculiarities were.

(Objected to as not responsive by complainant.)

Cross-int. 46. You have stated that, as you understand, it was not to obtain your opinion as to their genuineness that you were asked to examine those papers; as to what did you understand your opinion was desired? You will please observe the question does not ask what was stated to you, but what you understood.

857 Ans. My impression was clearly that it had reference to the general arrangement and the peculiarities with which these papers were drawn, some of which I have already named.

Cross-int. 47. Why was your opinion sought for, if it did not in any way relate to the signatures or genuineness of these papers or either of them?

Ans. I cannot tell. I had never heard their genuineness questioned, and by genuineness I mean signatures.

Cross-int. 48. The last question is not confined to signatures, but to the genuineness of the papers. Answer it with this understanding.

(Objected to—form and substance.)

Ans. I understood there were peculiarities about these papers, and to those my attention was called.

Cross-int. 49. Did you notice at that first examination at the clerk's office that either of the signatures to F. W. P., 1 and 10, had or had not been retouched?

Ans. I did not.

Cross-int. 50. Or in any way or in any portion written over twice?

Ans. I did not.

Cross-int. 51. Are you acquainted with, or related to, any of the legatees under Miss Howland's will that you know of, except Lydia Congdon?

Ans. I know all, but am not related to any that I know of.

Cross-int. 52. Are you on terms of intimacy with any of them, including the trustees, Edward D. Mandell, George Howland, jr., and William A. Gordon?

Ans. I am on terms of intimacy with many of them, and those three trustees are all my intimate acquaintances and friends.

Cross-int. 53. How recently have you been a witness in any case as to the genuineness of handwriting?

Ans. The last time was within three months, in Mr. Pitman's office, before commissioners, on an insolvent estate.

Cross-int. 54. And there was a question of forgery involved in that, was there?

Ans. I think there was.

Cross-int. 55. How many times have you been called in court to testify as to a question of forgery?

858 Ans. I think, including cases of counterfeit money, five or six times; excluding the cases of counterfeit money, I have only

been called as named above, and in the case of Shaw and Lothrop, where the question was as to the genuineness of the signature of Cyrus Lothrop; that, I think, was tried twice, and I think I was a witness both times. It was many years ago.

JAMES B. CONGDON.

859 SATURDAY, *Oct.* 27, 1866.

Deposition of William F. Davis.

I, William F. Davis, of Boston, in the county of Suffolk, on oath say: That I am aged thirty-nine years. My occupation is that of a clerk. I was a broker in State street, doing business there for several years. Before that I was a clerk in the Suffolk Bank. I am now acting as clerk for Joseph W. Davis, a broker in State street. I am now a member of the board of brokers.

I used to make the corrections for the Bank-note Detecter formerly published by Willis & Co. I did this from about 1845 to about 1855.

(And in answer to respondents' interrogatories as follows:)

Int. 1. State whether or not you have had occasion to make examination and comparison of handwriting and signatures; if so, for what length of time, and to what extent you have done so.

Ans. I have, for say twenty years, off and on. When in the bank, I made quite a study of it, say for three or four years there, and have continued it more or less to the present time.

Int. 2. State whether or not your services have been sought by the government of the State in determining genuineness of signatures, or otherwise, in connection with handwriting, and, if so, in what manner and how.

(Objected to for form and substance.)

Ans. I have been summoned on behalf of the State to testify as to the genuineness of bank-notes in cases of counterfeits. In the various courts of the commonwealth I have been summoned by the district attorneys. At one period I was almost constantly in attendance on the criminal terms of the court in Suffolk county—I should say as many as six times a year, independent of police court and grand juries; and sometimes I would testify in two or three cases at a single term, when called.

860 Int. 3. Say whether or not, besides the occasions above named, your judgment has been called for and obtained by private parties in matters concerning the genuineness of signatures, and, if so, for what length of time and to what extent.

(Objected to as above.)

Ans. I have frequently been so called upon during the last twenty years.

Int. 4. Will you now refer to original Exhibits R. C. P., 1 to 30, and R. C. P., 32 to 51, inclusive, and F. W. P., 1, F. W. P., 10, and F. W. P., 15, and state whether or not you have made examination of the signatures to those papers?

(Objected to on the ground that in the state of the pleadings in

this case the question is not open to respondents; also that it does not appear that the witness is an expert in relation to the matters inquired of, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I have.

Int. 5. State whether upon such examination, assuming that the signature of Sylvia Ann Howland to F. W. P., 1, is genuine, you have come to any conclusion as to the genuineness or want of genuineness of the signatures to Exhibits F. W. P., 10, and F. W. P., 15; and, if so, state what that conclusion is.

(Objected to as above.)

Ans. I have come to a conclusion; that is, that the signatures to Nos. 10 and 15 are a copy of the signature to F. W. P., 1, and were traced from that signature.

Int. 6. State, if you please, the reasons which have brought you to that conclusion.

(Objected to as above.)

Ans. Upon examination of the signatures to F. W. P., 10 and 15, I find them to be perfect in their copy from F. W. P., 1, fitting exactly over that signature. I went into an examination of the signatures to these papers, and other signatures of Sylvia Ann Howland, shown to me, one of which was admitted to be genuine, others said to be not genuine. This signature to F. W. P., No. 10, I pronounced to be not her signature. Then the discovery of the tracing was made by myself.

Int. 7. State whether upon that examination the signature
861 which you say was admitted to be genuine was pointed out or not before your personal examination was made.

(Objected to as above.)

Ans. It was.

Int. 8. Whether or not at that time was Exhibit F. W. P., 15, among the papers examined by you?

(Objected to as above.)

Ans. It was at my first examination, according to my best knowledge and belief.

Int. 9. State whether upon the examination you made of the signatures to the bills of sale marked R. C. P., referred to, you found any two of them correspond in their structure; and how did the correspondence compare with the correspondence of Nos. 10 and 15 with No. 1, (F. W. P.)?

(Objected to as above and assuming a fact not proved.)

Ans. I examined these bills of sale. I find her signatures to be written very regularly, but by comparison of them I could not make any two fit exactly alike—there were slight irregularities in the comparison. They did not correspond. I do not mean to be understood that I went through and compared every bill of sale signature with the others.

Int. 10. Please look again at those papers 1, 10, and 15, F. W. P.,

and state whether or not No. 15 was present when you made your first examination, and where that examination was.

(Objected to as to interrogatory fourth.)

Ans. I made my first examination at the clerk's office of the United States circuit court. I recollect now that 15 was not one of the papers on my first examination.

Int. 11. Will you state what degree of confidence you have in the conclusion you have given as to the genuineness of the signatures to Nos. 10. and 15?

(Objected to as above.)

Ans. I have no doubt of it in my own judgment.

Int. 12. How long, as nearly as you can state, after your first examination was it that you first saw F. W. P., 15, and when was it?

(Objected to as above.)

Ans. From two to three weeks, about. It was at the same office.

862 Int. 13. Examine the Exhibits R. C. P., 48, 49, 50, and 51, also F. W. P., 1, 2; and 10, and say whether those were the papers you first examined.

(Objected to as above.)

Ans. I recognize 50, 51, R. C. P.; F. W. P., 1, 2, 10; and there were two bills of sale which I have every reason to believe were the same referred to; but I cannot say as to these, as I did not charge my mind with them particularly.

Int. 14. Now say whether or not anything was said to you at the time as to which of these papers was not genuine, before you made your own examination.

(Objected to as above.)

Ans. There was not; neither anything pointed out in any way to indicate which was not genuine.

Cross-examination:

(The cross-examination by David Thaxter, esq., of counsel for complainant, is stated to be de bene esse, and not waiving objections heretofore taken.)

Cross-int. 1. Who went with you to, and who was with you at, the clerk's office when you made the first examination as you have stated?

Ans. Mr. Stetson. No one else, except that the clerk was in the room.

Cross-int. 2. When was that, as near as you can fix it?

Ans. As near as I can recollect, it was about two months ago.

Cross-int. 3. How long was that after Mr. Stetson or any one in his behalf had spoken to you about making this examination?

Ans. A week or so.

Cross-int. 4. During that week had you seen any photographs of any of these signatures?

Ans. I had not.

Cross-int. 5. Can you now state from recollection whether the papers referred to in the thirteenth direct interrogatory are all the papers and all the signatures of Sylvia Ann Howland you then saw?

Ans. I think they were.

Cross-int. 6. Are you certain of this; and what led you to suppose 15 was there then, as you first stated?

863 Ans. I am quite sure. I have now arranged the papers before me as I first saw them. I did not remember of seeing any paper marked in the manner 15 is now marked. When I first took them up this morning they were placed in a different form from what I now see them, and I took them up carelessly, without reference to the numbers.

Cross-int. 7. What first attracted your attention to the fact that you had made a mistake in that respect?

Ans. In refreshing my memory, I knew I had examined this paper, No. 15, at the clerk's office, after I had examined the former papers, and I remember this fact distinctly.

Cross-int. 8. When, in reference to the progress of this examination, and how, was your mind thus refreshed; after, before, or during the intermission which took place a little while since?

Ans. It was previous to my coming into the room, after the intermission. Mr. Stetson called my attention to the fact.

Cross-int. 9. And was the tenth direct interrogatory the first question that was put to you after the intermission?

Ans. It was.

Cross-int. 10. In the answer to the sixth direct interrogatory you have stated that "one of the signatures was admitted to be genuine;" state by whom.

Ans. Mr. Stetson.

Cross-int. 11. How long were you in making that first examination?

Ans. About twenty minutes.

Cross-int. 12. Did you at that time notice that the signature to either F. W. P., 1 or 10, had in any letters or parts of letters been retouched or written over?

Ans. If you call it retouched, I noticed then what I notice now. I do not know what you call the peculiarity to that A.

Cross-int. 13. Is the peculiarity to that A, which you speak of, the only peculiarity of that description which you now recollect of noticing at that first examination?

Ans. That is the only peculiarity I noticed in relation to retouching, or whatever it may be called.

Cross-int. 14. Did that peculiarity cause you to have any suspicion in regard to the signature, or lead you to make any, and, if any, what examination or experiments in reference to it?

864 Ans. It did not.

Cross-int. 15. What examination did you make at that first time? State how you conducted it.

Ans. I took a paper upon which it was said a genuine signature of Sylvia Ann Howland was written. No. 1, F. W. P., I think, was the paper. I compared the various papers so signed, one with the other, simply by laying the papers so that the signatures would come above or below—near each other; not placing the papers over each

other, but simply folding them so as to bring the signatures near to each other. In addition to that, I selected the signatures that would compare with each other, according to my judgment, and selected this, marked F. W. P., No. 10, as being the signature which I believed to be a forgery. After which I laid No. 10 over No. 1, (F. W. P.,) and found it to match perfectly, upon taking them to the window and laying them on the glass. That is all the examination I made at that time.

Cross-int. 16. Did you make any use of paper F. W. P., 2, in that examination?

Ans. I did not.

Cross-int. 17. Did you at that examination try any of the other signatures of Sylvia Ann Howland before you on the glass with the signature to F. W. P., 1?

Ans. I think I did not.

Cross-int. 18. When did you make the examination referred to in the ninth direct; and how many and which of the bills of sale did you compare?

Ans. I made that examination yesterday; I went through the list of the bills of sale. I took one bill of sale and compared the rest with that one, by overlaying and other comparison.

Cross-int. 19. When did you first see F. W. P., 15? How long an examination did you make of it, and who was present?

Ans. About three weeks or so after the first examination. I examined it fifteen or twenty minutes; no one was present but the usual clerks of the office.

Cross-int. 20. Have you been a witness upon the genuineness of writing and signatures in cases where George N. Comer and Albert S. Southworth, or either of them, have been examined as witnesses upon the same question?

865 (Objected to as immaterial.)

Ans. I have, with both.

Cross-int. 21. Have you in every such case always agreed with them, or either of them, in the opinion you gave as to the genuineness of the paper or signature in question?

(Objected to as above.)

Ans. I have not.

Cross-int. 22. Have you not testified in cases with great confidence as to the genuineness or falsity of a paper or signature when both or one of the persons referred to have testified with equal confidence to an opinion opposed to you?

(Objected to as incompetent.)

Ans. Not to my knowledge.

Cross-int. 23. Have you not in the cases where you have given your testimony in regard to the genuineness or falsity of papers or signatures given testimony which has been in favor of the party who has employed you or applied to you?

(Objected to as above.)

Ans. I should not say I had in all cases.

Cross-int. 24. State a case where you were employed to examine

papers or signatures, and have testified against the party who has thus employed you.

Ans. To the best of my recollection in one case I was summoned by the commonwealth to testify to a forgery which, in my judgment, did not exist. I did testify in that case, and testified according to that belief. This is carrying me back some fifteen years.

Direct resumed:

(And thereupon, the direct examination being resumed, the witness answers interrogatories as follows:)

Int. 15. State whether or not you have been applied to in this case by either of the counsel employed by the complainant, Miss Robinson, to make examination of these papers, and, if so, for what purpose?

(Objected to as immaterial.)

Ans. Mr. Thaxter called on me and asked me about the case, and I told him that I had committed myself in the case.

Int. 16. At your first examination say whether or not you used any magnifying glass.

866 Ans. I did; a small-sized pocket magnifying glass—two or three lenses.

Int. 17. Please say what you mean by committing yourself to the other side?

(Objected to as incompetent.)

Ans. I had previously examined the papers at the suggestion of Mr. Stetson, and had expressed an opinion to him.

WM. F. DAVIS.

867 WEDNESDAY, *Oct.* 31, 1866.

Deposition of Alexander C. Cary.

I, Alexander C. Cary, of Boston, in the county of Suffolk, on oath depose and say: My age is thirty-three. I am manager of the Boston office of the American Bank-note Company, and have been connected with that business since 1852, and with that company since its formation in 1858. The business of the company is the engraving and printing of bank-notes, bonds, stamps, and everything of that nature.

The examination by respondents then proceeds by question and answer as follows:

Int. 1. Say whether or not, during your connection with that company, you have had occasion to make examination and comparisons of signatures for the purpose of determining the genuineness or want of genuineness of them; and, if so, to what extent?

Ans. I have had such occasion. It is very common practice. In comparing the signatures on bank-notes mostly.

Int. 2. Whether or not has your business made you acquainted with the engraving or making of fac-simile signatures, and, if so, how largely?

(Objected to as immaterial.)

Ans. It has. It has been our practice to copy signatures for card plates and for bank-notes and bonds.

Int. 3. Will you state for what parties and in what way you have been employed in connection with that company?

(Objected to as above.)

Ans. I have never myself made direct contracts with the government of the United States. I have with different States. I have executed work for the United States government, under my control, at our office. The work for State governments was bonds, etc.

868 Int. 4. Will you now look at original exhibits marked F. W. P., 1, F. W. P., 10, and F. W. P., 15, and say whether or not you have made examination of the signatures to these papers?

(Objected to as above.)

Ans. I have.

Int. 5. Assuming that the signature to Exhibit F. W. P., No. 1, is a genuine signature, say whether or not you have arrived at any conclusion as to the genuineness or want of genuineness to the signatures of F. W. P., 10, and F. W. P., 15, and, if so, state what that conclusion is.

(Objected to on the ground that in the state of the pleadings in this case the question is not open to the respondents; also that it does not appear that the witness is qualified as an expert in the matters inquired of, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and not waiving these objections.)

Ans. My conclusion is that 10 and 15 signatures are copied from No. 1—traced from it.

Int. 6. State the reasons which have brought you to that conclusion.

(Objected to as above.)

Ans. The signatures are an exact copy of No. 1; and, where two signatures are alike, one of them must be copied or traced from the other. In one of them it is an exact trace; in the other, No. 15, it seems to have slipped or moved in tracing.

Int. 7. In the business of engraving, when fac-simile signatures are wanted, what course, according to your knowledge, is adopted to secure accuracy of copy?

(Objected to as immaterial and otherwise incompetent.)

Ans. Always traced from the original.

Int. 8. State why that course is adopted.

(Objected to as above.)

Ans. Because it is an impossibility to get a fac-simile without tracing.

Int. 9. Say, if you please, why that could not be done by imitation merely.

(Objected to as above.)

Ans. It is impossible to copy it so as to be correct.

Int. 10. Will you now say what degree of confidence you have in

the judgment you have given that the signatures to F. W. P., 10, and F. W. P., 15, are traced from F. W. P., 1.

869 (Objected to as to fifth interrogatory.)

Ans. I feel certain; there is no doubt whatever in my mind.

Cross-examination:

(The cross-examination which follows, by David Thaxter, esq., of counsel for complainant, is stated to be de bene esse, and not waiving objections heretofore taken.)

Cross-int. 1. What part of the business in which you are engaged do you personally attend to?

Ans. I am manager, and look after the whole of it.

Cross-int. 2. State more in detail what it is you yourself do.

Ans. I receive orders; after the plates are engraved, examine them to see if they are correct; have a general supervision over the printing department, to see if the colors, etc., are right—examine that every day. I have also had a considerable business of late examining counterfeit bills, which parties quite often bring in for me to see. I attend to all the correspondence of the concern; receive and pay out all the money. I make all the contracts made at the office.

Cross-int. 3. Where is your office?

Ans. 39 State street.

Cross-int. 4. Where is your engraving done?

Ans. Part of it in New York, part in Boston, by three or four different parties; portions in the office, and portions of it out of the office.

Cross-int. 5. Who does it in the office here?

Ans. Part of the work is machine work, and part handwork. There is no handwork done in the office at the present time; transferring is done there.

Cross-int. 6. Was any part of the handwork ever done at the office; and, if so, when?

Ans. Yes. From 1858 to within some three years, a part of it was. At times we have had letter engravers come there and do work.

Cross-int. 7. Did you yourself do the tracing when the fac-simile signatures were wanted to be engraved?

Ans. No, sir.

870 Cross-int. 8. Prior to 1858, what part of the business, which you say you have been engaged in since 1852, did you attend to?

Ans. Part of the time, printing of bank-notes; part of the time, foreman of the printing department; the balance of the time, assisting my father in the general management of the concern, which he was part owner of, in the same general way in which I am at present acting, as before described.

Cross-int. 9. Prior to 1852, what did you do?

Ans. Eighteen months I was at sea. Eight months previous to

that in a wholesale shoe store. Previous to that, and all the time after leaving school, I was at the office of the New England Bank-note Company, merely as a boy, assisting in the office and printing room.

Cross-int. 10. Have you ever been called as a witness in any case upon the question of the genuineness or falsity of any signature or writing; and, if so, in what case?

Ans. No, sir.

Cross-int. 11. Have you ever been called upon to give an opinion as to the genuineness or falsity of any signature or writing other than as to bank-notes and United States currency?

Ans. I have in regard to bonds—requested by the State of Massachusetts to examine those purporting to be issued by her; also in regard to letters, where their genuineness was involved—mostly relating to some money transactions. [In examining counterfeit signatures to bank-notes, we also had letters of the parties whom we supposed signed them, and I compared those with the signatures. The notes themselves were genuine, but the signatures supposed to be counterfeit.]

(Paragraph in brackets objected to by complainant's counsel as irresponsive.)

Cross-int. 12. State in what instances you yourself have been called upon to give an opinion as to the genuineness or falsity of any signature or writing other than bank-bills, United States currency, and State securities, where you have yourself made the examination and have yourself given the opinion.

Ans. I don't remember but one case—a letter in regard to a check.

Cross-int. 13. When and by whom were you first asked to look at these papers that you have testified about?

Ans. Mr. Eliot. Say about two months ago.

871 Cross-int. 14. When, with reference to that time, did you first see the papers?

Ans. The same day, at the clerk's office in the United States circuit court-room.

Cross-int. 15. Who was with you, and how long were you in making the examination at this time?

Ans. I went to the clerk's office, and Mr. Stetson, one of the counsel in this case, got the papers from the clerk for me to look at. I should think I spent half an hour, certainly, in examining them.

Cross-int. 16. At that examination did you notice that any letters of either of the signatures had been retouched or written over twice to any extent?

Ans. My opinion at that time was, that one of the signatures had been traced and marked over. That was F. W. P., No. 10. At that examination, I thought that in tracing that signature, that a double line had been made in the top of the letter A in Ann, which shows very distinctly.

Cross-int. 17. Did you notice that fact in regard to the double lines in the top of the letter A when you first looked at the papers,

and did it excite any, and what, suspicion in your mind in regard to how the same was made?

Ans. I noticed it, but why it was made I formed no particular opinion.

Cross-int. 18. Did that fact in any way lead you to suspect that the signature was not genuine?

Ans. No, sir; not that fact.

Cross-int. 19. Did the fact that the signature to No. 10 was marked over, to the extent which you there noticed it, lead you to suspect that the signature was not genuine?

Ans. Yes, sir.

Cross-int. 20. Was that the first fact you noticed which led you to suspect it was not genuine?

Ans. No, sir.

Cross-int. 21. To what extent did you then notice that that signature had been marked over? State what you then did see, and could see, and whether you examined it with a glass.

Ans. I thought the whole signature had been marked over;
872 that was my opinion at the time. I examined it with a glass, and could see what I believed to be traces of the original tracing.

Cross-int. 22. What traces of the original tracing did you see? Designate the letters and parts of letters where, you say, you saw such traces.

Ans. I cannot designate the particular letters where I thought I saw them, except the y in Sylvia; that is the only one I can state positively about. I am speaking now of what I saw then.

Cross-int. 23. What evidence of traces did you observe in the letter y?

Ans. I saw a slight mark at the top of the first turn in making the y.

Cross-int. 24. Have you the same or a similar glass with you now with which you made the examination then?

Ans. I don't remember. I have a half dozen of different powers at the office, and don't remember which I had with me.

Cross-int. 25. Have you any recollection of looking at these signatures with a glass more powerful than the one you now have?

Ans. No, sir.

Cross-int. 26. Will you now please look with this glass at the signature to No. 10, and state what traces of the original tracing you now see?

Ans. In the upper part of the letter S in Sylvia, I see marks which must have been made at different times by different strokes of the pen. I see the same appearance in the lower part of the i and the upper part of the a in the same word; also in the upper part of the last n in Ann; also in the letter a in Howland, in the o part of the a; also in the upper part of the H in the same word.

Cross-int. 27. Have you stated all the traces of the original tracing which you can see?

Ans. All that I notice.

Cross-int. 28. When you say you saw marks which must have been made at different times, state what you see that indicates this.

Ans. Double lines and different colored ink.

Cross-int. 29. What different colored inks do you notice?

Ans. One appears lighter than the other in color.

Cross-int. 30. Were you acquainted with Mr. Eliot before he called on you, or were you introduced to him by any one, and whom?

873 Ans. I was not. He introduced himself to me at my office.

Cross-int. 31. When did you next see these three papers after your first examination at the clerk's office, and where?

Ans. Here at this place, just before the examination.

(And thereupon counsel for respondents resume their examination as follows:)

Int. 11. Please say what you mean by the expression, in your answer to the twenty-sixth cross-interrogatory, "by different strokes of the pen."

Ans. I was assuming that this was done by different strokes of the pen—this tracing.

Int. 12. Whether or not have you formed any opinion whether the first tracing was done with a pen or otherwise?

(Objected to as to the fifth direct interrogatory.)

Ans. Yes; I think it was done with a pen or with ink. I presume with a pen.

Int. 13. Whether or not you are now employed in examining the genuineness of any instruments; and, if so, by whom?

(Objected to as immaterial and otherwise incompetent.)

Ans. The State of Massachusetts bonds. I presume the case is not yet settled. That is the only open matter. I have just completed the examination of certain counterfeit bills. The case I refer to is one in which Fogg, Houghton & Co., and a German savings bank are concerned; and where there has been an alteration in the numbering of the bonds. Mr. Bartlett, the lawyer, and one of the firm of Fogg, Houghton & Co., asked my opinion in the premises. The question relates simply to the alteration of the numbers of the bonds.

A. CLAXTON CARY.

874

875 THURSDAY, *Nov.* 22, 1866.

Deposition of George G. Smith.

I, George G. Smith, of Boston, in the county of Suffolk, aged seventy-one years, on oath say:

My occupation is that of an engraver. I have been in that business since 1811, when I began as a pupil, and have followed it ever since. At that time the art of engraving, though divided into a great many branches, was all carried on by the same individual; we were therefore obliged to become familiar with every branch. I have been concerned in lettering of every description, portraits, landscapes, and in fact every branch of what was understood as the art of engraving.

I ought to add that, after the early period of my art, I became acquainted with bank-note engraving in all its branches. Engraving of handwriting and signatures was included as a part of our business; also of fac-similes of handwriting.

(The examination by respondents by question and answer then proceeds as follows:)

Int. 1. State whether you were at any time, and, if so, for how long connected with the Massachusetts Charitable Mechanic Association; and in what way.

(Objected to as immaterial and otherwise incompetent.)

Ans. I have been a member since 1831; its president for the constitutional term of three years.

Int. 2. In your business as engraver, state whether you have or not had occasion to acquaint yourself with handwriting and with signatures.

(Objected to as above.)

Ans. I have. A minute acquaintance with these necessarily grew out of my practice in engraving.

Int. 3. Say whether or not you have made the subject of
876 handwriting and signatures a study, and, if so, for how long a time, and generally to what extent.

(Objected to as above and for form.)

Ans. I have been obliged to pay close attention to them during the whole course of my business.

Int. 4. In making fac-simile engravings of signatures, state, if you please, how you proceed.

(Objected to as immaterial and otherwise incompetent.)

Ans. There are two ways. If the original is of no consequence, we pencil it over very carefully; and after we have examined it with a magnifier, to ascertain if our pencilling is correct, having previously laid a thin coating of white wax upon the surface of the plate to be engraved, we lay the subject to be engraved face down upon the wax, rubbing it smartly with the burnisher, when the black lead, left by the marks of the pencil, comes entirely off upon the wax, leaving a perfect transcript of the original, backwards, upon the plate. There are other modes of transferring, but in the end they all amount to the same thing. When the original is of consequence, the usual method is to lay a piece of thin paper, oiled on one side only, down upon it, with the oiled side next the original. A tracing can then easily be made--as the paper is so transparent as to render visible the minutest lines—by means of a pencil, and then transferred as before.

Int. 5. From your knowledge of this business, state why you make such tracing.

(Objected to as above.)

Ans. That I may obtain all the minute peculiarities of the original.

Int. 6. Why do you not do this by copying, or in some other way than by tracing?

(Objected to as above.)

Ans. Because it would take much longer, and would not be so accurate.

Int. 7. State whether you have or not ever known a signature to be engraved in any way other than as you have described, so that the engraved signature would match the original when placed over it?

(Objected to as above for form and as assuming a fact not proved.)

Ans. I never have.

Int. 8. State whether or not you have been called to ex-
877 amine signatures for the purpose of testifying in court, and whether you have so testified.

(Objected to as immaterial and otherwise incompetent.)

Ans. I have. For several years I was consulted frequently, and frequently testified in court.

Int. 9. Will you now look at original exhibits marked F. W. P., 1, F. W. P., 10, and F. W. P., 15, and say whether or not you have examined the signatures to those papers?

(Objected to as above.)

Ans. I have.

Int. 10. Assuming that the signature to F. W. P., 1, is genuine, state whether you have come to any conclusion, upon that examination, as to the genuineness or want of genuineness of the signatures to F. W. P., 10, and F. W. P., 15, and what that conclusion is.

(Complainant objects on the ground that in the state of the pleadings in this case the question is not open to the respondents; also, that it does not appear that the witness is qualified as an expert in the matters inquired of, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and not waiving these objections.)

Ans. I am unable to say without referring to my memoranda what signature I examined as a standard. Upon now referring to my tracings, I feel confident that I examined No. 15 as a standard. I find on examining F. W. P., 1, with my tracing made in October that it fits that exactly. Assuming No. 1 to be genuine, the others could not possibly be. I will add this remark, that at this lapse of time, without recollecting which was presented to me as genuine, I concluded the other two could not be genuine.

Int. 11. At the time you made the examination, did you or not make notes in writing? If so, refer to them, to refresh your memory, and state what conclusions you reached upon such examination.

(Objected to as above and as incompetent by reason of any examination of minutes.)

Ans. I did make such notes. On referring to them, I would say that No. 15, as compared with No. 1, which was stated to me to be the original, on placing an accurate tracing of No. 1 over No. 15 the word Sylvia corresponds, as does the word Ann; also the word How-
land, when placed separately under the tracing of No. 1. There
878 is, however, a scarcely perceptible difference between the length of the two signatures, when examined by a magnifier. No. 10, examined in the same manner with a tracing of No. 1, corresponds exactly, not only as to the position of the words in respect to

each other, but also in general length. On trying the three signatures as to their variation in line—that is, on laying a ruler so as to exactly touch the bottom of the close of the S in Sylvia, and the bottom of the last mark of the d in Howland—the deviation of the words from a straight line corresponds exactly in all three signatures. I made no other memoranda. Without going into the question which was the original, my conclusion was, that two must have been traced from the other.

Int. 12. Give, if you please, the reason for the conclusion you have stated.

(Objected to as to interrogatory ten.)

Ans. My reasons are, that I cannot conceive it possible that three signatures could have been written corresponding so exactly with each other, not only in the form of the letters, the general length of the signatures, also the exactly similar distances between the words; and, above all, their exact agreement in every letter in variation from a straight line, that, for all these causes, I cannot conceive it possible that these three signatures can have been written independently of each other.

Int. 13. State from your knowledge and experience whether or not you have ever known two signatures that were genuine to correspond as you have stated the signatures to Nos. 10 and 15 do with No. 1.

(Objected to as last above, and that it does not appear that witness has any knowledge or experience on the subject.)

Ans. I never have.

Int. 14. State whether or not you believe such correspondence to be possible.

(Objected to as above.)

Ans. I cannot, of course, pretend to fix the exact limits of possibility; but I cannot conceive that it could be.

Cross-examination:

(The cross-examination which follows is by David Thaxter,
879 esq., of counsel for complainant, and is stated to be de bene esse, and not waiving objections heretofore taken.)

Cross-int. 1. State whether you have ever known of your own knowledge fac-simile engravings of signatures to be made, or attempted to be made, in any manner different from what you have described in your answer to fourth direct interrogatory?

Ans. Certainly.

Cross-int. 2. State all the other ways.

Ans. Photographing, lithographing, and cutting on wood. I recollect no others. I did not mention these, because they have no connection with my business.

Cross-int. 3. Do you mean to say that fac-simile signatures, made in the way stated in your last answer, would not match the original when placed over it in any instance?

Ans. If the matching was attempted by an impression taken on wet paper, they probably would not, as the shrinkage of the paper

would make a difference; still the variation would be small. If, however, the work were faithfully done, and the impression taken on dry paper, I see no reasons why the impression should not almost exactly match the original.

Cross-int. 4. How recently, before this case, have you been called on to examine any papers as to the genuineness of signatures, for the purpose of testifying in court?

Ans. I could not say precisely. Not for several years; seven or eight say.

Cross-int. 5. What was the last case?

Ans. I couldn't say.

Cross-int. 6. Do you feel certain that that was within ten years?

Ans. I should think it was about that. I can't say precisely, but I made up my mind then that I never would be called again.

Cross-int. 7. How many cases concerning the genuineness of signatures do you remember having been called on to testify in, excluding any where you may have been called as a witness to the signature?

Ans. I have not the slightest recollection of the number; I should be glad to tell if I could. I can only say several.

Cross-int. 8. Can you remember any case when you have
880 been called to testify as to the genuineness of signature, where the question of tracing was one of the questions involved?

Ans. Yes, sir; the Miller case, the first which I was ever called on, [which was a case similar to what I consider this to be. That was altogether a case of tracing; there were three different classes of signatures traced from three different originals.]

(The clause in brackets is objected to as not responsive by complainants.)

Cross-int. 9. Any other case that you remember?

Ans. I do not remember any other such case.

Cross-int. 10. In your answer to the eleventh direct interrogatory did you not read directly from your minutes in making the statements commencing with the words, "on placing an accurate tracing of No. 1 over No. 15," down to where you state you made no other memoranda?

Ans. All of that was directly read from my minutes. You saw me read it.

Cross-int. 11. When and by whom were you first applied to to make any examination in this case?

Ans. In the early part of October, by Messrs. Eliot and Stetson.

Cross-int. 12. Do you yourself now personally work as an engraver?

Ans. Yes, sir; I have always done so, with the exception of two years, when I was not well.

Cross-int. 13. When and where did you first see the signatures to Nos. 1, 10, and 15?

Ans. Whether they were brought to me at the first interview by Messrs. Eliot and Stetson, I cannot distinctly recollect; but I saw them about that time. I am not sure whether I saw all these sig-

natures at the same time; but am certain I saw some of them as above stated, and all of them at some time.

Cross-int. 14. Where did you see all of them together first?

Ans. At the clerk's office of the court. It was there I made the notes referred to.

Cross-int. 15. Before seeing them altogether at the clerk's office for the first time, are you quite certain that at any other place you saw either of these three signatures—the original papers 1, 10, and 15, I mean?

Ans. Yes; quite confident, that I saw as many as two—and
881 my impressions are very strong that I saw all three—at my own office. I could not have come to any opinion or conclusion unless I had seen them.

Cross-int. 16. Where were these tracings made that you say you yourself made?

Ans. Two of them at my office and one at the clerk's office.

Cross-int. 17. And you are quite certain, are you, that the two tracings made at your office were made directly from some two of the three original papers, 1, 10, and 15, by you?

(Objected to as assuming a fact not proved.)

Ans. I feel confident they were.

Cross-int. 18. Have those tracings aided you more or less in arriving at the conclusions of which you have testified as to the genuineness of the original signatures?

Ans. It is by laying those tracings over the original signatures that I have arrived at the conclusion that two of them are traced from the other. I said nothing about the genuineness of the signatures.

Cross-int. 19. Who, if any one, was present with you when you made the tracings which you say you made at your office?

Ans. Mr. Stetson. I think no one else. I mean Mr. Stetson, of counsel.

Cross-int. 20. Have you any recollection of seeing any photographic copies of these signatures, or either of them, or what purported to be such?

Ans. Enlarged photographic copies of one or more of them were shown me at our first interview.

Cross-int. 21. Which tracings were made first—those at your office, or those at the clerk's office?

Ans. Those at my office.

Cross-int. 22. Was paper No. 1—I mean the signature—the one that was traced in the clerk's office?

Ans. It was.

Cross-int. 23. About how long after the other tracings was this one made?

Ans. Several days; I cannot recollect the precise time.

Cross-int. 24. Did you make any examination of these sig-
882 natures other than tracing them and comparing them with the tracings, as you have stated?

Ans. I did not. Shall I give my reasons?

(To which counsel for complainant answers to witness, "No.")

Direct resumed:

(And thereupon the direct examination is resumed as follows:)

Int. 15. Will you now recollect and say whether the signatures first shown to you at your office were not all of them photographic copies the original signatures to the papers afterwards examined by you at of the clerk's office?

(Objected to as incompetent and as leading.)

Ans. I am quite sure they could not have been, for they had their seals appended to them, and were the same papers I afterwards examined at the clerk's office, apparently.

Int. 16. Please state whether you were or not requested to call at the clerk's office for the purpose of making examination of the original signatures at that place.

(Objected to as above.)

Ans. I was; as it could not be properly done in consequence of the interruptions of business at my office.

Int. 17. Whether or not did you take any note to the clerk, requesting him to show you the original papers?

(Objected to as above.)

Ans. I did. The papers the clerk brought to me he said were the originals. He pointed them out to me as Nos. 1, 10, and 15. This was at his office.

Int. 18. Now please to say whether that was not the first time that you had seen those original papers that the clerk then showed you.

(Objected to as above.)

Ans. I think I had seen one or more of them at my office. I am convinced I did; I think all of them, but am not quite sure.

Int. 19. Please look carefully at these papers now shown you, (R. C. P., 5th photograph, R. C. P., 6th photograph, R. C. P., 7th
883 photograph,) and say whether or not these, or duplicate photographs of them, were not the ones Mr. Stetson showed you at your office; look carefully.

(Objected to as above.)

Ans. As regards those marked R. C. P., 5th photograph, and R. C. P., 6th photograph, I have no doubt those are the same that I referred to in a former answer. With regard to the one marked R. C. P., 7th photograph, I cannot be certain. I now recollect perfectly well that there was some conversation in my office about the originals being in the clerk's office. I am very sorry that I made no memoranda of the circumstances, and of what I then saw. I wish to say also that I remember saying that I had as lief make a tracing from these as from the originals; for, being photographic copies, I considered them the same thing. I would also say that I remember seeing these marks of seals, (pointing to the photographic impressions on R. C. P., 7th photograph,) but this might have misled me. My impression is very vague as to this matter.

(Complainant objects to all statements of conversation.)

Int. 20. Do you not remember asking Mr. Stetson at the time what

the black block at the bottom of Photograph R. C. P., 7th photograph, was?

(Objected to as above.)

Ans. I have no definite recollections on that point.

Int. 21. Say whether or not it was at that time Mr. Stetson gave you the letter to the clerk, requesting him to show you the originals at the clerk's office.

(Objected to as above.)

Ans. I am not able to say definitely; it was soon after that, at all events.

GEO. G. SMITH.

884

885 *Deposition of John E. Gavit.*

FRIDAY, *Jan.* 4, 1867.

I, John E. Gavit, of New York city, county, and State, aged forty-nine years, on oath say: That I am president of the American Bank-note Company of the city of New York, and the business of that company is the engraving of bank-notes and other valuable instruments. It is the principal company in the world; and we have executed hundreds of millions of United States notes; and have done business for Russia and other governments of Europe.

I have myself been for over thirty years engaged in the business of bank-note engraving, and have been a practical engraver. As a part of my business, I have been engaged in engraving fac-similes of signatures.

Interrogatories by respondents:

Int. 1. State whether or not, in the course of your business, your attention has been called to the examination and study of handwriting.

(Objected to as immaterial.)

Ans. It has; to signatures, and the imitation of handwriting.

Int. 2. State briefly the process of engraving of signatures.

(Objected to as immaterial and otherwise incompetent.)

Ans. By rubbing the signature over with graphite, and then transferring to a wax surface, and engraving from that.

Int. 3. For what reason does the engraver resort to that rather than to imitation?

(Objected to as above.)

Ans. To get exactitude, to get an absolute fac-simile.

Int. 3½. Whether or not is that the only way a perfect fac-simile can be obtained?

(Objected to as above.)

Ans. There are other modes, but all based upon the same principle of tracing. I might for instance do it by laying a piece of paper over the signature against the window.

Int. 4. State any other mode, except some form of tracing, by which an exact copy could be had.

(Objected to as above.)

886 Ans. For engraving, I know of no other; you might copy by photography.

Int. 5. How are signatures of the Treasurer of the United States on the currency notes made?

(Objected to as above.)

Ans. By engraving from tracings of original written signatures.

Int. 6. State any reason that occurs to you that renders engraved signatures more or less safe than signatures in writing.

(Objected to as above.)

Ans. We consider the uniformity of engraved signatures an advantage.

Int. 7. Why not get the uniformity in signatures by the handwriting of the same man?

(Objected to as above.)

Ans. In my experience I have never found two signatures by the same hand, when superimposed, to be absolutely identical fac-similes.

Int. 8. Please look at the documents F. W. P., No. 1, F. W. P., No. 10, and F. W. P., No. 15, now produced to you, and state whether or not you have examined those documents; and, if so, when and to what extent.

(Objected to as above.)

Ans. I have examined these documents this day for the first time; I have spent about two hours in the examination with my glasses—magnifying instruments—as well as with the naked eye.

Int. 9. Assuming the signature to F. W. P., No. 1, to be a genuine signature, what is your opinion as to the genuineness or want of genuineness of signature to F. W. P., No. 10?

(Objected to on the ground that in the state of the pleadings in this case the question is not open to the respondents, and so is incompetent; and further, that it does not appear that the witness is qualified as an expert in relation to the matters inquired of, and gives notice that any cross-examination of this witness upon the subject of this interrogatory will be de bene esse, and not waiving this objection.)

Ans. There is such a remarkable identity to the signatures in spaces between the words when superimposed, that in my judgment it is impossible that they could have been written by the same person, unless traced. I mean by words, the Sylvia, Ann, and Howland. Also I refer to identity of letters. This relates to No. 10.

887 Int. 10. Assuming the signature to No. 1 to be genuine, how, in your judgment, was the signature to No. 10 made, whether by tracing, or what other mode?

(Objected to as above.)

Ans. In my judgment, by tracing, and inked over afterwards.

Int. 11. State any other reasons, if there are any, besides the identity you have referred to, which appear to you to show that No. 10 has been traced.

(Objected to as above.)

Ans. It appears that the signature has all been gone over from the first letter to the last with a pen. That is all that I have to add.

Int. 12. Please state the degree of confidence you have in the opinion you have expressed, that, if the signature to No. 1 is genuine, the signature to No. 10 is not.

(Objected to as above.)

Ans. I have a great deal of confidence. I feel that it is a grave case; and I have a good deal of confidence on the ground of the identity that it has been made by tracing. I feel that it would be utterly impossible to have been written without tracing.

Int. 13. Please look at Exhibit F. W. P., No. 15, and, assuming that No. 1 is a genuine signature, state what is your judgment as to the genuineness of signature to No. 15.

(Objected to as above.)

Ans. On superimposing No. 15 over No. 1, I find the word Sylvia to be a little farther off from the word Howland than in No. 1, as if the paper in tracing had slightly moved. With this exception the words and spaces are almost identical. This fact impresses me even more than the identity of the other that this is a traced signature. It is one of those peculiar accidents that to my mind more strongly convinces me that it is a traced signature.

The word Ann, between the words Sylvia and Howland in No. 15, is just the intermediate distance in error of the difference between the other two words. It gives a certainty to my mind that I cannot very well express.

Int. 14. Now state the instruments with which you examined these papers.

(Objected to as above.)

888 Ans. I used the ordinary lenses, and a compound microscope of Tolles—one of the best makers in the country.

Int. 15. Can you express its power?

(Objected to as above.)

Ans. It is about seventy-five diameters.

Cross-examination:

(The cross-examination which follows is by David Thaxter, esq., of counsel for complainant, and is stated to be de bene esse, and without waiving of any objections heretofore taken.)

Cross-int. 1. In answer to the eleventh interrogatory, you have stated that the signature to F. W. P., No. 10, has all been gone over from the first letter to the last with a pen; will you state what indications, and all indications which lead you to make that statement?

Ans. In applying the glass to quite a number of the letters, there are parts not quite covered with the thick pigment of the ink, and also the uniformity of that thickness of the ink from the first letter to the last, which is different from that of any signature I have seen.

Cross-int. 2. Will you now state each letter and each part of a letter where you notice it is not quite covered with the thick pigment of the ink?

Ans. The letter a in Sylvia is one that is peculiar; the final downstroke of the last n in Ann; the letter a in Howland—those are the most indicative of being what we call painted or touched up. [This

signature differs in this respect from all other signatures of hers that I have examined.]

(Clause in brackets objected to by counsel for complainant as irresponsive.)

Cross-int. 3. Do you notice any other letters besides the a's and the n that are not covered? If so, state the letters or parts of letters.

Ans. There is portion of the A in Ann; but there are minute peculiarities in every letter which I cannot characterize in language, which show me that it is painted or retraced throughout.

Cross-int. 4. Before testifying, had you any information in regard to the facility with which the person who wrote the signature Sylvia Ann Howland to F. W. P., No. 1, could write; and would or would not the fact that a person could or could not write with
889 facility have affected the judgment you have given in regard to the genuineness of Nos. 10 & 15?

Ans. I had no information, All I know I gathered from examination of the papers referred to, and a bundle of exhibits, R. C. P., 1 to 51, inclusive. The hypothesis stated would not affect my judgment. My judgment depends on the superimposing of these signatures which I insist show an identity which could not be effected without tracing. That is the point I wish to impress—by tracing or some similar method.

Cross-int. 5. Suppose a genuine signature to be shown you, and two other signatures of the same name, which latter two upon being superimposed over the genuine signature should be as nearly identical to the genuine signature as you find Nos. 10 & 15 to be with No. 1 when superimposed, would or would not your opinion as to the fact that the two signatures first referred to as superimposed were traced, depend in any way on the ease or difficulty with which the person who made the first signature wrote?

Ans. I think not.

Cross-int. 6. Is the inking over, referred to in your answer to the tenth interrogatory, the same as is indicated by your answer to the eleventh; that is, do you mean the same thing in each answer?

Ans. Yes, sir.

Cross-int. 7. In the last line of your answer to the fourth cross-interrogatory, you use the words "or some similar method." What do you mean by those words?

Ans. It all comes under the head of tracing.

Upon the deposition being read over to witness, he desires to add as follows:

That the paper marked F. W. P., No. 15, impresses me, I don't know why, with the resemblances of the handwriting of the signatures to the handwriting in the body of the paper; there is a remarkable resemblance in the color of the inks and in the whole character of the writing.

(The counsel for complainant object to the above, for the reasons stated in the objection to the ninth direct interrogatory, and as otherwise incompetent.)

JOHN E. GAVIT.

890

891 TUESDAY, *Nov.* 27, 1866.

Deposition of Albert S. Southworth.

I, Albert S. Southworth, of Boston, in the county of Suffolk, aged fifty-five years, on oath say:

In answer to written interrogatories propounded on behalf of the respondents:

Int. 1. Whether or not has your deposition been taken before in this suit?

Ans. It has.

Int. 2. Will you statewhat is your business, and say for how long a time you have been engaged in it, and in what places, if more than one?

(Objected to as matter originally examined in the previous deposition.)

Ans. Photographing and attention to questioned handwriting is my business, including the illustration of questioned handwriting by photography, so as to show easily to the naked eye and with facility what is seen with the magnifying glass by a slower process. I have been a photographer since the winter of 1839–'40, and have applied photography to handwriting since 1858. I have practised photography in New York, in Professor Morse's gallery; in Cabotville, Springfield, and in Boston.

Int. 3. Will you state who was the first person within your knowledge who practised the art of photography in Massachusetts, and when that was?

(Objected to as not within the order allowing the re-examination of this witness, and as otherwise incompetent.)

Ans. I know of no one who practised it in Massachusetts when I commenced, and for some eight months afterwards, except the partner I had with me. The time of my commencement in Massachusetts was in February, 1840.

892 Int. 4. Will you now state whether you have or not since your former deposition made photographic copies or illustrations of the exhibits produced in this case or any of them; and, if so, will you produce them, and state what they are?

(Objected to on the ground that in the state of the pleadings in the case the question is not open to the respondents, that it does not appear that the witness is qualified as an expert in relation to the matters inquired of, also that the question is otherwise incompetent, and also because such copies and illustrations are incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and not waiving these objections.)

Ans. I have made such copies and illustrations. I here produce Books marked R. C. P. Book 1, vol. 1; R. C. P. Book 1, vol. 2; R. C. P. Book 2; R. C. P. Book 3; R. C. P. Book 4; R. C. P. Book 5; R. C. P. Book 6; R. C. P. Book 7; R. C. P. Book 8; R. C. P.; Book 9; R. C. P. Book 10; R. C. P. Book 11; R. C. P. Book 12; R. C. P. Book 13; R. C. P. Book 14; R. C. P. Book 15; R. C. P. Book

16; R. C. P. Book 17; R. C. P. Book 18; R. C. P. Book 19; R. C. P. Book 20; R. C. P. Book 21; R. C. P. Book 22; R. C. P. Book 23; R. C. P. Book 24; R. C. P. Book 25; R. C. P. Book 26; R. C. P. Book 27; R. C. P. Book 28; R. C. P. Book 29; R. C. P. Book 30; R. C. P. Book 31.

The two larger volumes, marked R. C. P., Book 1, vol. i., and R. C. P., Book 1, vol. ii., contain as follows:

Vol. 1.—Plate 1st has four figures the natural size of F. W. P., Nos. 1 and 10.

Plate 2d has the first page of No. 1, F. W. P., enlarged.

Plate 3d is the second side of the leaf No. 1, F. W. P., enlarged.

Plate 4th is the first side of No. 10, F. W. P., enlarged.

Plate 5th is the second side of the same.

Plate 6th is a section of No. 11, F. W. P., enlarged

Plate 7th is a section of No. 2, F. W. P., enlarged.

Plate 8th is the concluding parts of Nos. 1, 10, and 15, F. W. P., for the signatures, enlarged.

Plate 9th is concluding parts of Nos. 1 and 10, for the signatures, enlarged.

Plate 10th is the concluding parts of Nos. 1, 10, and 15, F. W. P., natural size, with a rider of same impression transparent by oil.

893 Plate 11th is the same enlarged—the same signatures, I mean.

Plate 12th is signature to No. 10, F. W. P., taken through the paper as a transparency, the light, when taken, coming from behind the original.

Plate 13th is signature to No. 15, F. W. P., taken in the same manner as the last described.

Plate 14th are the signatures to the standards bills of sale, power of attorney, and deed, natural size, with riders of same respectively made transparent with oil, the Nos. corresponding with the Nos. R. C. P. on the original exhibits.

Plates 15th, 16th, 17th, and 18th are enlarged copies of the same, numbers corresponding as above.

Vol. 2 has the following:

On the cover, in the large envelope, is a mica parallel scale, (marked R. C. P., mica scale.) This scale is to test the accuracy of lines ruled on Plate 4, Fig. 2d, vol. 2d, by placing the mica over the signatures to F. W. P., 1, 10, and 15 originals, similarly arranged, the third line on the left of the mica to just touch the top of the capital S in Sylvia. The second envelope contains an architect's scale engine, ruled divisions, sixtieths of an inch and thirtieths of an inch, to test the instrument used in photographing. These are the originals of Plates 12 and 13, vol. 2. (These are marked by the examiner, R. C. P. Scale 1, R. C. P. Scale 2, R. C. P. Scale 3, R. C. P. Scale 4, R. C. P. Scale 5, R. C. P. Scale 6.)

The third envelope contains photographs, in natural size, of originals F. W. P. 1, 10, and 15, some rendered transparent by oil and some not. (These are marked R. C. P. Photograph 8, R. C. P.

Photograph 9, R. C. P. Photograph 10, R. C. P. Photograph 11, and R. C. P. Photograph 12.)

Plate 1st is a drawing of the sizes of Nos. 1, 10, and 15, F. W. P., with the base line of each word in the signatures marked in red, as for ruling, with transparent riders photographed, laid over as a test.

Plate 2d contains copies of the three papers F. W. P., 1, 10, and 15, pasted upon a card-board for the purpose of measuring by the tests in the third envelope the stretch of the paper when pasted upon card and when not so pasted—it being the universal tendency in pasting a damp sheet upon a dry, that the dry holds the damp in tension, and stretches it.

Plate 3d are the measures of the whole length of the signa-
894 ture, the length of each name in the signature, and length of spaces between each name, corresponding with the numbers F. W. P., 1, 10, and 15, and the numbers in red of the standards marked R. C. P., composed of bills of sale, power of attorney, and deed.

Plate 3½ are the photographs, natural size, 1, 10, and 15, F. W. P., with the signatures superimposed and transparent.

Plate 4th. Fig. 1st are curves drawn with the same radius under Signatures 1, 10, and 15, F. W. P., placed nearly horizontal and perpendicular to each other.

Fig. 2d are the same signatures in the same position with parallel lines drawn through with parallel ruler clasped to the signatures on the left, remaining the same until the last line is drawn.

Plate 4½ is No. 1, F. W. P., signature underneath, with No. 15, F. W. P., signature placed over, cut through and across, both in natural and enlarged sizes.

Plate 5 are the signatures to Nos. 1, 10, and 15, F. W. P., enlarged, with curves of same radius drawn underneath each word; also with a rider.

Plate 5½ is the exact size, without folding, of Nos. 1, 10, and 15, F. W. P.

(These being movable are identified with the examiner's name.)

Plate 6th contains signatures to Nos. 1, 10, and 15, F. W. P., also signatures to Nos. 48, 49, 50, and 51, R. C. P., enlarged, and signature to No. 1, F. W. P., and signatures to Nos. 48, 49, 50, and 51, R. C. P., natural sizes, with parallel lines drawn across them.

Plate 7th are the signatures to Nos. 10 and 15, F. W. P., natural size and enlarged, with sections cut from the filling of Nos. 1, 2, 10, 11, and 15, F. W. P., placed in juxtaposition; also, letters cut natural size from Nos. 10 and 15 signatures, dotted with red underneath, with letters cut from the filling placed in juxtaposition.

Plate 8th is No. 10, F. W. P., signature enlarged, taken as a transparency, with four sections cut from the filling placed in juxtaposition.

Plate 9th is No. 15 treated in the same way, with two similar sections.

Plate 10th has signatures to Nos. 1, 10, and 15, F. W. P., en-

larged, with signature to No. 10 cut through and placed over signature of No. 1, F. W. P.; also one natural size similarly placed.

Plate 11th has photographs of signatures to F. W. P., No. 10, arranged for testing the correctness of the photographs in
895 these two volumes, and all of the photographs produced in the other books heretofore produced in this answer.

The manner of testing is to take proportionate dividers, setting the short legs at any given distance on the smaller signatures, and the longer legs at corresponding points on the larger signatures, then by adjusting the short legs at pleasure to any portion of the small ones the long legs will point out corresponding portions of the other.

Plates 12 and 13 are copies of the scale divided into thirtieths and sixtieths of the scale in Envelope 2d on the cover of this book, enlarged photographs, for the purpose of testing the correctness of the photographs now produced in the several books referred to in this answer. The test is to be made with the sheets now pasted on card-board. [These are marked with the name of the examiner for verification. The transparency is from the same negative as the opaque, and the test is to be made by varying the transparency over the surface of the opaque at pleasure.

An additional test is by the proportionate dividers, using the originals for the short legs, and the enlarged copies for the longer ones. The ratio between the different sizes of the photographs of the signatures, taking the signature to F. W. P., 10, as the standard, is ($\frac{24}{64}$) twenty-four-sixty-fourths of an inch for the length of the S in Sylvia natural size; ($\frac{71}{64}$) seventy-one-sixty-fourths for the same, the next size above; ($\frac{146}{64}$) one hundred forty-six-sixty-fourths for the one taken as a transparency, and ($\frac{344}{64}$) three hundred forty-four-sixty-fourths for the enlarged one from it on Plate 11, where all these may be found.

In testing, all of these must be pasted on card-board, or none of them.

Plate 14 has signatures to bills of sale of standards, power of attorney, and deed, being exhibits marked R. C. P. of enlarged size.

Plates 15, 16, 17, and 18 are plates in continuation of the same, and of signatures to Nos. 1, 10, and 15, F. W. P., with riders of same impressions.

Enclosed between two leaves at the end of the volume are skeletons, from which sections used in Plate 7 were cut.

The riders in any of the books, large or small, here pro-
896 duced, are to be applied only to photographs taken at the same instant, on the same negative, as they are placed in the books. This is for the purpose of comparing only those of same proportions with each other.

The small books, marked respectively "R. C. P., Book 2" to "R. C. P., Book 31," inclusive, are made up of the following photographs, viz: Copies of Nos. 1 and 10, F. W. P., natural size; of the three signatures placed nearly horizontal or perpendicular to Nos. 1, 10, and 15, F. W. P., with riders, natural and enlarged size; Nos. 10 and 15, F. W. P., signatures, taken as transparencies and signatures to the

bills of sale, deed, and power of attorney, natural size, used as standards with transparent riders.

These books are all photographs, without touch of pen, pencil, or any instrument whatever that I know of. I mean this to apply to all the books, large and small.

(Complainant objects to the production of each and every book and each and every plate and exhibit produced, and all explanations of the same, as incompetent.)

Int. 5. In making the photographs concerning which you have testified, will you state what instrument you used, and what is its character for accuracy?

(Objected to as immaterial and otherwise incompetent.)

Ans. I used the long-focus Voigtlander instrument, made in Vienna. Voigtlander's instruments stand as high or higher than other instruments among photographers, as far as I know. In copying signatures such as are contained in the books I have furnished, the proportion is accurate, and no variation can be seen, measured, or in any way detected.

Int. 6. Whether or not in making these photographs, was the work done by you, and under your personal supervision?

(Objected to as above.)

Ans. The most of it was done with my arrangement and personal supervision. Previous to my being employed in this case, several negatives had been taken; these negatives I have tested, by taking the same signatures again; they were correctly taken, and no imperfection in the drawing or proportions can be seen, measured, or detected.

897 Int. 7. Say whether or not you have examined, and, if so, state whether or not the photographic copies you have produced are correct and true copies from the original exhibits, or how otherwise. State, if you please, what the fact is.

(Objected to as above and for form.)

Ans. I have examined them all carefully. They are true copies as I have before stated—in drawing and proportions, without any exception—of the original signatures and filling out in the papers F. W. P., 1, 2, 10, 11, and 15, and bills of sale, power of attorney, and deed, marked R. C. P.

Int. 8. State as well as you can what degree of care you took in doing this work.

(Objected to as immaterial and otherwise incompetent.)

Ans. I have made every effort in my power to do it with accuracy, by first arranging the papers to be copied properly, parallel to the axis of the lens, and in all my measurements endeavored to be as precise as practicable. I cannot think of any omissions of care and effort in doing this work.

Int. 9. State whether any of these photographs have been taken by you without the use of a lens; and, if so, which, and how were they taken?

(Objected to as above.)

Ans. The photographs used for the measures of the sizes of the

papers F. W. P., 1, 10, and 15, were taken by superposition, letting the light shine through the originals on the sensitive paper. Those in Envelope 3, Book 1, vol. 2, the measures Plate 1, and the whole of Plate 2, the whole of Plate 3½, the whole of Plate 5½, all in same Book 1, vol. 2, are all photographs of this kind.

Int. 10. Look at Exhibits R. C. P., 5th photograph; R. C. P., 6th photograph; and R. C. P., 7th photograph, annexed to deposition of George G. Smith, and say whether or not you made them, and whether or not they are true copies of the originals.

(Objected to as not covered by the order of the court allowing the re-examination of the witness, and as immaterial and otherwise incompetent.)

Ans. No. 7 I made. Nos. 5 and 6 were made from a nega-
898 tive which I have proved and used. They are both from the same negative. They are true copies of the originals.

Int. 11. Look at Exhibits R. C. P., 1st photograph, *a*; R. C. P. 1st photograph, *b*; R. C. P., 2d photograph, *a*; R. C. P., 2d photograph, *b*; R. C. P., 3d photograph; and R. C. P., 4th photograph, annexed to deposition of Joseph E. Paine, and say whether or not you made them, and whether or not they are true copies of the originals.

(Objected to as above.)

Ans. R. C. P., 3d, and R. C. P., 4th, are duplicates of the same negative referred to in my answer to the last question, which negative, as I stated, I have proved. R. C. P., 1st photograph, a; and same, b; and R. C. P., 2d photograph, *a*; and same, *b*, are duplicates from the same negative used in Plate 1, Book 1, vol. 1, which negative I have proved. They are all true copies of the originals.

Cross-examination:

(The cross-examination which follows is by David Thaxter, esq., of counsel for complainant, and is stated to be de bene esse, and not waiving the objections heretofore taken.)

Cross-int. 1. Were all the photographic copies or illustrations produced by you in answer to the fourth interrogatory taken from negatives, which negatives had been obtained before your first examination?

Ans. Some of the negatives have been taken since my first examination.

Cross-int. 2. Any negatives of F. W. P., 1, 10, and 15, or any other exhibit marked F. W. P. which you have referred to?

Ans. The photographs referred to as measures have all been taken since. No others of those inquired of, except the large ones as shown in Plates 12 and 13, in Book 1, vol. 1. I find I am mistaken. The negatives for Plates 6 and 7 were taken since I gave my former deposition. These are in the same book and volume. The one enlarged from the one taken as a transparency of No. 10, as shown on Plate 11, vol. 2, Book 1, has also been taken since. I think that is all.

Cross-int. 3. Where, at whose rooms, and by whom were
899 the negatives of F. W. P., 1, 10, and 15, obtained before your previous examination, and used in making any of the photographs referred to in your answer to the fourth interrogatory, made?

Ans. Made at Mr. Whipple's photograph rooms. Part of them I made or arranged to be made, and superintended the work throughout. The negatives of the others I found there; examined and proved them.

Cross-int. 4. Can the riders which are contained in the books produced by you be used over the same class of signatures, that is, natural or enlarged size, found in books or plates other than where you have placed them?

Ans. If placed over corresponding plates in other books, they could be so used equally well. If placed over any impression made from the same negative at the same instant, they will compare in proportion; they would do so over a negative made at a different time if the negative was made precisely the same size; if placed over a larger or a smaller print, and the purpose is to measure, the proportionate dividers and scale would then have to be used.

Cross-int. 5. What number of books of the size of the small books produced by you in answer to the fourth direct interrogatory have you in fact made?

Ans. Fifty.

Direct resumed:

(And thereupon the direct examination is resumed by respondents, as follows:)

Int. 12. Was it or not since your former deposition that you were requested to make these verifications and tests of the photographs?

(Objected to for form, and as not relating to any matter of cross-examination and as otherwise incompetent.)

Ans. Since.

Int. 13. When were the verifications and examinations completed by you?

(Objected to as not relating to any matter of cross-examination and as otherwise incompetent.

900 Ans. To-day, at half past ten o'clock.

Int. 14. When were the printed photographs and books ready for production as produced to-day?

(Objected to as above.)

Ans. To-day, at half past ten o'clock.

ALBERT S. SOUTHWORTH.

901 DEC. 10, 1866.

Deposition of Benjamin S. Anthony.

I, Benjamin S. Anthony, of Dartmouth, in the county of Bristol, yeoman, aged seventy-two years, on solemn affirmation say:

That I have lived near to Sylvia Ann Howland's Round Hill farm for the whole of my life; our farms join.

(And being examined by respondents, on interrogatories, testifies as follows:)

Int. 1. Whether or not in 1861 you were a justice of the peace? Ans. I was.

(Counsel for respondents here place in hands of witness paper marked as an exhibit, R. C. P., 54, placed in connecting position with the exhibit marked R. C. P.,52., formerly produced by witness Joseph E. Paine, and then puts to the witness the following interrogatory:)

Int. 2. Please to examine the deed now before you, thus composed of Exhibits R. C. P., 52, and R. C. P., 54, and say what you know in regard to Sylvia Ann Howland's signing the same.

(Objected to on the ground that in the state of the pleadings in this case the question and the subject-matter of examination is not open to the respondents; also because it does not appear that the witness is qualified to answer, and because the question is otherwise incompetent; and the complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I saw her sign her name to such an instrument, and I think that must be it, though it has been cut out.

Int. 3. Whether you took her acknowledgment to that deed of release?

(Objected to as above.)

Ans. I did at the Round Hill farm. That is my signature to the certificate of acknowledgment.

Int. 4. Whether or not you saw her sign this deed at the time you took the acknowledgment to this deed?

902 (Objected to as above.)

Ans. I did see her sign it at the time.

(Wm. W. Crapo, esq., of counsel for complainant is present, but does not cross-examine.)

BENJAMIN S. ANTHONY.

(R. C. P.—54.)

Know all Men by these Presents, That We Peleg Howland in right of his wife Sarah M. Howland, and the said Sarah M. in her own right, both of New Bedford in County of Bristol in consideration of Fifteen Hundred Dollars to her paid by Sylvia Ann Howland of said New Bedford the receipt whereof I do hereby acknowledge, do hereby give, grant, sell and convey unto the said Sylvia Ann Howland, her heirs and assigns forever, a certain lot of land situate in said New Bedford, bounded and described as follows: Beginning in the East line of Cottage Street at the North west corner of land formerly purchased by Edward Haskell from Edward Russell, thence running southerly in the line of said street Fifty feet to a monument, thence easterly in the line of said Haskell's other land seventy feet to a monument; thence northerly Fifty feet to the line of the land aforesaid bought by Haskell of Russell, and thence in the said line of said

land seventy feet to the place of beginning. Being the same land to said Sarah M. Howland conveyed from said Haskell by his Deeds dated May 1st 1857 and October 16th 1857 and Recorded to which reference may be had—Together with all Buildings thereon.

And I the said Peleg do intend to include in this conveyance, and do hereby expressly convey all my right, title, interest and estate in and to the premises which may now, or at any time hereafter be vested by law in me as the husband of said Sarah M. Howland.

To Have and to Hold, the afore-granted Premises to the said Sylvia Ann Howland her heirs and assigns, to their use and behoof forever. And we the said Peleg and Sarah M. Howland for ourselves, our heirs, executors, and administrators, do covenant with the said Sylvia Ann Howland her heirs and assigns, that said Sarah M. Howland is lawfully seized in fee of the afore-granted Premises; that they
903 are free of all incumbrances. That We have good right to sell and convey the same to the said Sylvia Ann, as aforesaid And that We will Warrant and Defend the same premises to the said Sylvia Ann Howland, her heirs and assigns forever, against the lawful claims and demands of all persons.

Provided nevertheless, That if the said Sarah M. Howland, or said Peleg, their Heirs, Executors, or Administrators, pay to the said Sylvia Ann Howland her Heirs, Executors, Administrators or Assigns, the sum of Fifteen Hundred Dollars in Ten years from date hereof with interest payable annually (the said promissors having the right to pay the whole or part of said sum at any times within said term, in which case interest thereafter shall only be due on the sum remaining unpaid.)

Then this Deed, as also one certain Note bearing date with these Presents, given by the said Sarah M. & Peleg to the said Sylvia Ann Howland, to pay the same sum with interest at the time aforesaid, shall both be void: otherwise shall remain in full force.

In witness whereof the said Sarah M. Howland and Peleg Howland have hereunto set their Hands and seals this seventeenth day of October in the year of our Lord One Thousand Eight hundred and Fifty Seven.

Signed, sealed and Delivered in presence of
ROBT. C. PITMAN.

SARAH M. HOWLAND [L. S.]
PELEG HOWLAND [L. S.]

Bristol ss. October 17th 1857 Then the above named Peleg Howland and Sarah M. Howland acknowledged the above instrument to be their free Act & Deed.

Before me,
ROBT. C. PITMAN, Jus. Peace.

Bristol ss (S.D.) October 17, 1857. Received and Recorded in the 34 Book of Land Records, on page 468.
Attest: BENJN. K. SAYER, Register.

In consideration of fifteen hundred dollars to me paid by Sarah M. Howland, mortgagee within named, the receipt whereof is acknowl-

edged, I do hereby assign and transfer to the said Sarah M. the within mortgage and note thereby secured, and release to her the said Sarah M. all my right and interest in the premises within described.

904 Witness my hand and seal this Twenty Eighth day of the Eighth month, eighteen hundred and sixty (one) one.

Bristol ss. 8th mo. 28th 1861. Then the above named Sylvia Ann Howland acknowledged the foregoing Release to be her free act & deed.

SYLVIA ANN HOWLAND. [L. S.]

R. C P—52

Before me, BENJAMIN S. ANTHONY Jus. Peace.

Bristol ss. (SD.) August 30th, 1861, at 11 hours 50 min. A. M. Received & Recorded in Land Records Book 46, page 119.

Attest. CHARLES C. SAYER, Register.

905 SATURDAY, *May* 11, 1867.

Deposition of Alvan Clark.

I, Alvan Clark, of Cambridgeport, in the county of Middlesex, aged sixty-three years, on oath say: My occupation at present is that of a maker of telescopes and optician; this has been my exclusive occupation for fifteen years; before that I was a painter of portraits and miniatures; from the age of twenty-two to thirty-one I was employed as an engraver for calico-printing. In this work of calico-printing engraving there was much tracing to be done, and I was familiar with the use of the tracing-point or needle. I have since been in almost constant practice of tracing—using the camera lucida in portrait painting, and tracing the outlines from the life picture; and even up to the present time I paint some; generally painting three or four portraits in the course of a year.

In making telescopes we furnish the instrument complete; I work the object-glasses myself; we make all parts of the instrument for astronomical work; we mount them with circles, driving-clocks, and micrometers complete. We make them mostly for colleges; we have made a number for high schools also.

The micrometer is a piece of mechanism with spider-lines at the focus of the object-glass; one of the spider-lines is fixed upon a frame, the other is movable upon a frame by a fine screw; upon one end of this screw is a small circle divided into one hundred parts; by the use of this screw a very small amount of motion is apparent. The spider-lines and the image of the object to be observed are brought in contact, and if the object be a double star, one web of the micrometer is placed upon one star and one upon the other. When both stars are accurately bisected the divisions upon the small circle mentioned show what portion of the revolution of the screw has been em-

ployed in bringing the webs to this distance. This relates to objects so close as not to be at the distance of one revolution of the screw. Where the distances exceed this there is a little scale connected with the frame that carries the movable thread which indicates the number of revolutions the screw has been turned. This instrument is capable of measuring to the ten-thousandth part
906 of an inch. Beside this measurement of distances the whole frame of the micrometer is attached to a circle from four to six inches in diameter, and is termed the position circle; its function is to determine the angle which the line joining the two stars makes with the meridian. The micrometrical observation of double stars includes the measurement of the angle of position and the distance. The observer sees the stars and the webs at the same time through the same eye-piece. The width of the screw-threads is from a sixtieth to a seventieth of an inch. I make these measurements myself.

Eye-pieces are used of different magnifying powers in connection with the micrometer, varying from fifty to a thousand diameters. The largest telescope we have ever made—and it is the largest refracting telescope in the world—is eighteen and a half inches in diameter of the object-glass, and the focal distance is twenty-three feet. I ground its lenses myself, and my two sons both worked on it. This is the glass that discovered the companion star of Sirius. This glass is in Chicago.

I have also furnished Amherst, Williams, and Alleghany Colleges, and the Sheffield scientific school attached to Yale College; also, a college in Pennsylvania, whose name I do not recall; and also one for a college in Kingston, Canada, and one for a government observatory in Quebec. We have five object-glasses in England, between seven and one-quarter and eight and one-quarter inches in diameter; also, one five and one-half. We have one in Ireland of about four inches.

And the examination then proceeds upon interrogatories in writing by the respondents' counsel, as follows:

Int. 1. Are you a member of the American Academy of Arts and Sciences?

(Objected to as immaterial.)

Ans. I have been for some three years.

Int. 2. State whether you received their gold medal.

(Objected to as immaterial.)

Ans. I have received the Rumford medal; it was for my improved method of working object-glasses.

Int. 3. What acquaintance have you with the Voigtlander lens, if any?

(Objected to on the ground that in the state of the pleadings
907 in this case this question is not open to respondents; also, that it does not appear that the witness is an expert in relation to the matters enquired of, and because it is not in rebuttal to the plaintiff's evidence, but merely cumulative testimony upon that part of the case where respondents have closed, and as otherwise incompetent;

and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I have repeatedly examined them; measured the curves of all the lenses for the purpose of copying them in some cases upon magnified scales. We made one instrument, of about nine inches aperture, for Mr. Whipple, the photographer, in Boston, a photographic camera, in which we employed the proportions we found in the Voigtlander lens.

Int. 4. What is the quality and accuracy of this lens?

(Objected to as above.)

Ans. It has been the most extensively used as the best in photography. I think, though I am not certain, that it is still the most extensively used.

Int. 5. It is desired to obtain your own opinion as to its accuracy and quality.

(Objected to as above.)

Ans. The most desirable point in a camera is the extent and flatness of the field, the sharpness and distinctness of the image at the centre and border of the field; the field of a camera may be large and flat, and the images badly defined all over it; a lens for a camera or a telescope can never form a good image at one point and near by a bad image at the same time, and the reverse is of course true—if one image is bad at one place all the images near it will be bad also. The Voigtlander lens is adjustable—by that adjustability straight lines of a building, or a straight edge falling towards the margin of a picture, can be made straight as the original, or by changing the adjustment of the lens that straight edge may be made to assume a curve upon the picture in a given direction, or if the change be made in an opposite direction the curve will be in an opposite direction. When the lens is in perfect adjustment the images of straight lines in objects falling upon or near the margin of the picture will be straight. That is the evidence of the excellence of the adjustment. If, with that, due sharpness of the image is visible, the camera is perfect. I have found that, upon examination, to be the general character of the Voigtlander instruments; although when the
908 whole aperture is employed with the instrument in perfect focus at the centre of the picture it will be a little out of focus at the edges. That effect is not so apparent when the aperture is diminished. Hence, in copying, it is usual for photographers to reduce the aperture.

Int. 6. Do you happen to know whether Albert S. Southworth, the Boston photographer, is or is not acquainted with the adjustment of the Voigtlander lens?

(Objected to as above and as leading in form.)

Ans. He is. Some twelve or fifteen years ago I had occasion to be with him in an investigation which required us to obtain such an adjustment of the instrument as would give straight lines. That was the first time my attention was called to it. I found he was familiar with it before I was.

Int. 7. Please to state whether you have examined the photographic work in R. C. P., Book 1, Volume 1 and Volume 2.

(Objected to as above, and also that it does not appear that the witness is competent as an expert upon the subject-matter enquired of.)

Ans. I have.

Int. 8. Look particularly at Plate 13, R. C. P., Book 1, Volume 2, at the unpasted engine-divided scale and the oiled engine-divided scale with it, and say whether or not you have examined them, and with what care; and state what you discover, if anything, as to the accuracy of their expansion or want of accuracy.

(Objected to as last above.)

Ans. I do not know as I understand the term expansion as you apply it.

Int. 9. The question refers to the accuracy or want of accuracy of the result of this magnified scale as compared with the engine-divided scales in Envelope 3 in the beginning of the volume.

(Objected to as above.)

Ans. I have examined them with care and found them very accurate.

Int. 10. What proofs of accuracy or otherwise do they exhibit?

(Objected to as above and for form.)

Ans. The straightness of marginal lines is one; the straightness of the lower horizontal parallel lines is another. I have examined the unpasted scale and the oiled scale and find them accurate, as I should have expected after drawing a thread along the marginal line and finding that straight, provided the scales had been placed or arranged for photographing in one plane at right angles to the axis of
909 the instrument. If they had not been duly so placed, they would have been foreshortened, and, consequently, uneven in the graduating.

Int. 11. Did you examine the equality or inequality of the divisions of the unpasted sheet?

(Objected to as above.)

Ans. I did.

Int. 12. Did you do the same as to the oiled sheet?

(Objected to as above.)

Ans. I did.

Int. 13. Have you made any examination of the negative from which this unpasted and this oiled sheet were taken?

(Objected to as above.)

Ans. I have.

Int. 14. Were you or not able to identify it as the negative from which these were taken?

(Objected to as above.)

Ans. I was.

Int. 15. From this examination of said photographic scales and their negative, are you or not able to state concerning the accuracy or inaccuracy of the lens that made them and its performance? and, if so, please to do so fully.

(Objected to as above.)

and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

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Int. 5. It is desired to obtain your own opinion as to its accuracy and quality.

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Ans. The most desirable point in a camera is the extent and flatness of the field, the sharpness and distinctness of the image at the centre and border of the field; the field of a camera may be large and flat, and the images badly defined all over it; a lens for a camera or a telescope can never form a good image at one point and near by a bad image at the same time, and the reverse is of course true—if one image is bad at one place all the images near it will be bad also. The Voigtlander lens is adjustable—by that adjustability straight lines of a building, or a straight edge falling towards the margin of a picture, can be made straight as the original, or by changing the adjustment of the lens that straight edge may be made to assume a curve upon the picture in a given direction, or if the change be made in an opposite direction the curve will be in an opposite direction. When the lens is in perfect adjustment the images of straight lines in objects falling upon or near the margin of the picture will be straight. That is the evidence of the excellence of the adjustment. If, with that, due sharpness of the image is visible, the camera is perfect. I have found that, upon examination, to be the general character of the Voigtlander instruments; although when the
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(Objected to as last above.)

Ans. I do not know as I understand the term expansion as you apply it.

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(Objected to as above.)

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Ans. I did.

Int. 13. Have you made any examination of the negative from which this unpasted and this oiled sheet were taken?

(Objected to as above.)

Ans. I have.

Int. 14. Were you or not able to identify it as the negative from which these were taken?

(Objected to as above.)

Ans. I was.

Int. 15. From this examination of said photographic scales and their negative, are you or not able to state concerning the accuracy or inaccuracy of the lens that made them and its performance? and, if so, please to do so fully.

(Objected to as above.)

Ans. I should say that they afford us an excellent test of the excellence of the instrument.

Int. 16. If there was error in the instrument or in the adjustment of its lens, how would such error show itself in these scales or their negative?

(Objected to as above.)

Ans. In the curvature of marginal lines and in the graduations of the scale, growing either coarser or finer as you recede from the centre.

Int. 17. Please to state whether objects of the size of signatures on Plate 14, same volume, would or not test the accuracy of the instrument more or less than said scales.

(Objected to as above and for form.)

Ans. These scales would be more convenient and reliable by far in testing the accuracy of the instrument.

Int. 18. Please to state whether or not you have examined Plate 10, Volume 1, Book 1, R. C. P., and compared the signatures thereon with their originals F. W. P., 1, 10, and 15, now before you.

(Objected to as above.)

Ans. I have.

910 Int. 19. And with what care or otherwise?

(Objected to as above and for form.)

Ans. I should say with a good measure of care.

Int. 20. State whether said Plate 10 is or is not of the same scale with said originals. I refer to the signatures.

(Objected to as to No. 18 and previous interrogatories.)

Ans. It is.

Int. 21. What confidence, if any, have you in this statement?

(Objected to as above.)

Ans. Perfect.

Int. 22. Please refer to Plate 4, Volume 2, Book 1, R. C. P., and state whether you have examined the signatures thereon, (I refer to the larger picture,) and whether or not you have measured the same, comparing them with the original signatures now before you, F. W. P., 1, 10, and 15?

(Objected to as above.)

Ans. I have examined them and found the original signatures and the photographs equal in size.

Int. 23. With what degree of care did you make this measurement, if any, and what confidence have you in the result which you have stated?

(Objected to as above.)

Ans. With all the care I could bestow with a pair of sharp-pointed dividers, and the difference of dimensions in the whole length of the signatures can't certainly exceed the one-hundredth of an inch. I have complete confidence in the result which I have stated.

Int. 24. Whether or not any difference in the length of the photographed signatures and the corresponding originals was apparent to your eye?

(Objected to as above.)

Ans. None.

Int. 25. Please to refer to Plate 15, Volume 2, Book 1, R. C. P., and to the numbers on the unpasted and unoiled photographs, and say whether or not you have made examination of any of those photographed signatures in connection with the bills of sale marked R. C. P., 12, and R. C. P., 13.

(Objected to as above.)

Ans. I have.

Int. 26. Whether or not you have measured said signatures in the bills of sale in such way as to test the correctness of their relative expansions in the photographs?

(Objected to as above.)

911 Ans. I have compared them with proportionate dividers, and found them equally magnified in each case.

Int. 27. In testing for equality of expansion state where is the greater liability to error, if any, whether in the use of proportionate dividers, or in the use of two-legged dividers; and please to explain it.

(Objected to as above.)

Ans. If you magnified exactly two, three, or four times, you might use two-legged dividers; but if there is a fraction—say, for instance, three and one-half—there would be more trouble in getting the result with two-legged than with proportionate dividers. With the latter you reach the fraction at once; and if they are skilfully managed they are equally reliable.

Int. 28. Which would require the greatest number of applications and computations?

(Objected to as above and as leading.)

Ans. The simple two-legged dividers; that would, however, depend on whether there was a fraction in the magnifying, as I stated above.

Int. 29. Would or not the liability to error increase with the number of readjustments of the measuring instrument during the measurement, and with the number of applications of it to the objects and to the scale, and the number of computations?

(Objected to as above and as leading.)

Ans. If the fraction came in such a way as to require a great many subdivisions where a great deal of precision is required, it would tend to throw a little doubt over the precision of the results.

Int. 30. Please refer to Plate 16, Volume 2, Book 1, R. C. P., and state whether you have examined its unpasted and unoiled photograph, and state whether or not you have examined any of the photographic signatures thereon in connection with the signatures to the bills of sale R. C. P., 4 and 42.

(Objected to as to interrogatory twenty-seven and prior.)

Ans. I have.

Int. 31. Please to state what measurements you made, and with what results.

(Objected to as above.)

Ans. The measurements were made with proportional dividers as before, and with similar results.

Int. 32. Please to explain a little more in detail, and refer to the numbers.

(Objected to as above.)

912 Ans. I have the minutes in relation to 4, but have none in relation to 42, (R. C. P.) After all I find I have both here. I measured them both with the proportional dividers and found them accurate, found them equally magnified. I do not know that I can say anything farther.

Int. 33. Please to examine Plate 17, Volume 2, Book 1, R. C. P., and its unoiled and unpasted photograph, and state whether or not you have made any examination and measurements thereon in connection with original signatures to Exhibits R. C. P., 23, and R. C.P., 26.

(Objected to as above.)

Ans. I have; similar examinations to those of the preceding, and with similar results.

Int. 34. Please to state what you ascertained as to the equality or otherwise of their magnifying.

(Objected to as above.)

Ans. I found them equally enlarged.

Int. 35. Whether or not in your examination of Volume 1 and Volume 2, Book 1, R. C. P., any distortion in any of the photographs was discovered by you ?

(Objected to as above.)

Ans. There was not; neither do I think that any exists. Such signatures would not put the work to the test that right-lined objects would; but after examining these scales and right lines which have been photographed I am led to this conclusion.

Int. 36. Please to state what use you have made of tracing-points and tracing-paper in your experience.

Ans. I have used it in transferring designs to steel and copper, and also a great deal in portrait and miniature painting, where I make a tracing of the face from the camera lucida; and when I have had occasion to transfer this to ivory or other material, I have done it by tracing. It has been a common practice with me to smear vermilion with a piece of cotton over the back of the design, and then lay it upon the paper, canvas, or ivory, and with a stiff needle trace over the out lines; a line of vermilion, under the pressure of this needle, is communicated to the paper or ivory.

Int. 37. In your examination of etchings and tracings, state whether or not you have been able to distinguish whether the movement of the line traced was a slow or fast movement.

(Objected to as above.)

913 Ans. When it is important to keep very accurately on the line, it is the practice to carry the hand slowly. Slight vibrations, waviness, slight irregularities, and want of smoothness indicate this slow movement. In cases where it is of less importance that the lines should be precisely located, we are freed from the care and restraint, and move with more rapidity; a greater smoothness and regularity of the line will follow.

Int. 38. Please to state whether you have examined the originals,

F. W. P., No. 1, F. W. P., No. 10, and F. W. P., No. 15, and the signatures thereof; and, if so, assuming No. 1 to be genuine, state your judgment and opinion as to the genuineness of the signatures to Nos. 10 and 15.

(Objected to as above.)

Ans. I have examined these originals. I should judge Nos. 10 and 15 were forgeries. The care and constraint in the writing, the little zigzag irregularities in various parts, would indicate that they were traced or very carefully written with a slow, irregular movement of the hand. Where the human hand, in writing, is moved with ordinary freedom, the momentum of the hand itself compels the pen to pursue a smoother and more regular course than when employed in ordinary tracing.

Int. 39. State whether or not you have superimposed the signatures to 10 and 15 upon the signature to No. 1; and state, if so, what you observed thereupon.

(Objected to as above.)

Ans. I have. I observed they did not match so closely as they would have matched if I had traced them myself; yet there were large portions of each of those signatures, when placed on No. 1, which exhibited a correspondence which I could not account for on any other supposition than that they were traced.

Int. 40. Whether you have observed any letter or part of letter in the word "Sylvia" which appears to you to be peculiar; and if so, please state your observations concerning it, and explain fully.

(Objected to as above.)

Ans. In "Sylvia," in signature to No. 10, the pen is taken up at the completion of "i" and put down again in the upper part of the "a." This movement, so far as I have examined the signatures of Sylvia Ann Howland, is contrary to her practice in writing her name. In all of her signatures which I have examined the first part of the a and d is formed as she would form an e; the pen is carried from the i in the word Sylvia directly to the top of the a, and descending
914 forms usually a loop like e, but not always; sometimes it descends so nearly on the same line that the loop is not visible. This is the case in all the signatures I have examined, not only with the "a's" generally but with the "d's."

Int. 41. From your examination of these papers, 1, 10, and 15, is it or not your opinion that 10 and 15 were traced from No. 1; and, if so, what confidence have you as to that?

(Objected to as above.)

Ans. I should think they were traced, but unskilfully traced. I have entire confidence in this opinion.

(At this point the witness desires to say that he wishes to modify his statement in answer to the fortieth interrogatory, that the pen was put down inside, near the top of the letter a, instead of at the top of a, forming a hook instead of a loop.

The word "near" is underscored at request of witness, who says he desires to have it emphasized.—R. C. P.)

Adjourned to Monday, 10 a. m.

MONDAY, *May* 13.

(Agreed that Francis W. Balch, esq., may act as the clerk of Robert C. Pitman, esq., in taking the remainder of the examination of Alvan Clark, a witness in the case of Hetty H. Robinson, in equity, vs. Thomas Mandell et als.

THAXTER & BARTLETT,
Attys. for Plff.
T. D. ELIOT, *for Defts.*

Under the above, Mr. Balch acted as clerk till the forty-third cross-interrogatory. R. C. PITMAN, *Ex'r.*

Direct examination of Alvan Clark continued:

Int. 42. Look at the enlarged transparent rider on Plate 11, Book 1, Volume 1, R. C. P., and say whether or not you made any examination of that rider; and if so, what.

(Objected to as to preceding questions.)

Ans. I have examined them. The rider and the plate I examined by placing the rider upon the photographs, comparing
915 the points of correspondence and the points of difference. I measured with the proportional dividers, found all of them enlarged to the same degree—they were equally enlarged. I believe that expressed the whole.

Int. 43. Whether or not, in making this examination, did you at the same time have the original exhibits marked F. W. P., 1, 10, and 15, before you?

Ans. I had.

Int. 44. With reference to those exhibits, whether or not upon your examination, did you find the signatures upon said riders truly and equally enlarged, or how otherwise?

Ans. They were truly and equally enlarged.

Cross-examination of Alvan Clark:

(The plaintiff's counsel object to the preceding interrogatories numbered 38, 39, 40, and 41, and to all testimony which is merely cumulative on the subjects on which the defendants have heretofore examined witnesses and rested, leaving the plaintiff to rebut. Any cross-examination of the present witness, and of all others, is de bene esse, until a motion can be made, and without waiving any previous objections.

Counsel for respondents object to the suggestion made by the counsel for the plaintiff upon the record as affirming incorrectly the fact that the respondent had rested, and claim that the examination should be proceeded with in the usual manner and subject to the usual rights.)

Cross-int. 1. You have described in your direct examination with great care and detail a piece of mechanism called the micrometer, capable of measuring the ten-thousandth part of an inch. What use of that instrument have you made in making the examination with regard to which you have testified?

Ans. None at all.

Cross-int. 2. Did you not make the Voigtlander lens for Messrs. Whipple and Black, instead of Mr. Whipple, as you have testified?

Ans. I am not able to say whether they were in company at the time. The work was ordered by Mr. Whipple, and all the transactions in connection with it, the ordering of the glass, the raw material, the testing, and paying for the instrument was all done by Mr. Whipple.

916 Cross-int. 3. Do you remember what year that was, or about what year; or about how long ago it was? State it as nearly as you are able.

Ans. I might vary a number of years. I know it was more than ten years ago.

Cross-int. 4. Were you not requested to make this lens so as to give a flat field to be free from distortion?

Ans. I do not remember that any such request was distinctly made, though I know that the owner of an instrument would desire that it should give a flat field.

Cross-int. 5. Did you exercise your best skill in making this lens so as to compromise the figure of the Voigtlander lens and to make it produce, if possible, a flat field and an image free from distortion?

(Object to this question as cross-examination upon a matter not opened by us, leading, and immaterial.)

Ans. I used the best skill and means I possessed at that time to perfect the instrument in every respect. [I would add my experience as a working optician has since that time been very large.]

(Portion of reply in brackets objected to by plaintiff's counsel as irresponsive.)

Cross-int. 6. Will you tell us whether in regard to this instrument you endeavored to get a flat field and an image free from distortion?

Ans. I simply copied the curves and distances in the lenses employed by Voigtlander, only upon an enlarged scale.

Cross-int. 7. Did you not so copy those curves for the purpose of obtaining among other things a flat field, and an image free from distortion?

Ans. I was not aiming at a result surpassing that exhibited in the original instrument from which I copied.

Cross-int. 8. Then I understand you, Mr. Clark, to say that there was no intended or attempted improvement upon the Voigtlander lens as then sold in the market, in the lens made by you in regard to the flatness of field or freedom from distortion?

(Objected to as immaterial.)

Ans. None. The lens was simply a copy until the polishing was completed; then by a small amount of local working between the centre and circumference of the lens, as I now practise in working object-glasses for telescopes, I did aim to produce a more

917 complete concentration of light at the focus of the camera, when the object to be viewed or photographed was a bright stellar point.

Cross-int. 9. What local working do you mean, Mr. Clark, and how does that affect the surface or curve of the lens?

(Objected to as immaterial.)

Ans. It does not affect the surface sensibly. The work is performed by a little rouge upon the end of the finger, and the glass is rubbed away only by the finger and rouge. The aim is to produce a sharper defining, but does not in the least affect the flatness of the field, or location or form of objects upon the negative, only the sharpness with which they are exhibited.

Cross-int. 10. So that this lens, so made by you, was expected to have all the virtues and all the vices, if any, of the Voigtlander lens, and no improvement in the flatness of the field or freedom from distortion was hoped for?

(Objected to as leading and as immaterial, because inquiring as to an instrument which has no connection with the case, not having been used for any purposes of illustration in the case, and as cross-examination upon a matter not opened by respondents.)

Ans. I was not arriving at or expecting to produce an instrument sensibly different from the original, except in its dimensions.

Cross-int. 11. Do you know, Mr. Clark, whether or not the lens so made by you did produce a flat field, an image free from distortion?

(Objected to as above.)

Ans. On going into the owner's hands it was immediately applied to taking portraits and groups. I never myself, nor do I know that the owner has ever subjected it to a rigorous test by pictures of buildings or rectangular objects. The instrument has given satisfaction, I believe.

Cross-int. 12. Do you know whether or not the work in these two books marked R. C. P., Book 1, Volumes 1 and 2, was made by this lens manufactured by you?

Ans. I do not.

Cross-int. 13. Have you seen the instrument by which they were made?

Ans. I have not.

Cross-int. 14. Where did you see the negatives that you have testified that you have examined?

918 Ans. In this room. (N. B. This room is the office of Mr. B. F. Thomas, 31 Washington street, Boston.)

Cross-int. 15. What lenses have you made to be used in photographing since you made the lens for Mr. Whipple, which you have testified about, and for whom and when?

Ans. We made a number of small instruments; one for Whipple about that time, whether before or after I cannot say. No large ones; several small which have been sold. I cannot recollect to whom but in one case; that was a widow lady of the name of Livermore, who purchased it for her son.

Cross-int. 16. Do you know that either of these small lenses were used for any other purpose than the taking of portraits?

(Objected to as immaterial.)

Ans. I do not.

Cross-int. 17. What is the form of the surface of the Voigtlander lens, spherical or otherwise?

Ans. Spherical; nearly as they can be wrought.

Cross-int. 18. So that each point or polygon of the surface has the same radius?

Ans. Mathematically speaking it would not; the deviation would be exceedingly slight. Such deviation comes only from the irregularities to which all spherical curves would be subjected in grinding or polishing. Where the tool is made as it should be, to get the closest proximity to a spherical curve, if the glass is moved from one portion to another of the tool in order to produe an even distribution of the grinding or polishing material, a portion of the lens passes beyond the edge of the tool at every stroke, and for a portion of the time is not cutting while the rest is being cut. This is the main cause of the deviation from a mathematical sphere.

Cross-int. 19. So that, if I understand you correctly, the surface of a good Voigtlander lens forms a perfect arc of one single true sphere, as far as it is practicable for a good workman to accomplish it? By surface, I mean that part of the lens which is nearest the object to be photographed.

Ans. They are as nearly spherical as good workmen can make them.

Cross-int. 20. Do you know the globe lens?

919 Ans. I have seen them; never examined them critically.

Cross-int. 21. Do you know the difference between the globe lens and a Voigtlander?

Ans. I do.

Cross-int. 22. From personal examination?

Ans. I do.

Cross-int. 23. From that personal examination, what difference did you discover, if any, in the surfaces or form of the surfaces of these two lenses?

Ans. They are all spherical; nearly as they can be worked.

Cross-int. 24. Then you would expect the same photographic results in regard to the flatness of the field and accuracy of the image from each lens, would you not?

Ans. In the globe lens there is a large spherical aberration, unless the aperture is much reduced. With the aperture reduced, I believe, the image is perfect, as perfect as in the Voigtlander lens. With the aperture open the images of all objects fall in their due places upon the ground glass, but lack the required sharpness of definition.

Cross-int. 25. Do I then understand you that it would require more care to get a correct image from a globe lens than from a Voigtlander, having reference to the necessity of reducing the aperture by a diaphragm?

Ans. No more care, but a little more time.

Cross-int. 26. Then I understand you that you can get as equally accurate an image or photograph or picture by the use of the Voigtlander lens as by the use of the globe, and with more rapidity.

Ans. If the instruments are well made I think they will be equal in accuracy, but the Voigtlander, in consequence of its greater angle of aperture, would work more rapidly.

Cross-int. 27. And with equal exactness with the globe in work requiring accuracy, as line or rectangular work?

Ans. I think the precision of the work, if each instrument were well made, as I have already stated, would be equal.

Cross-int. 28. Please understand my question as not referring to any theories upon which these lenses are made, but to the practical question whether in use it is the fact that the Voigtlander lens produces a figure as exact and accurate as the globe lens, and whether among photographers employed in line and rectangular work, such as the copying of engravings, the Voigtlander lens is now used as much as the globe lens?

(Objected to as immaterial.)

Ans. For several years past I have seen but little of the operations of great photographing establishments, and know not their practice as to the use of the one or the other of these instruments at this time.

Cross-int. 29. Is not the globe lens much more recent than the Voigtlander?

(Objected to as immaterial.)

Ans. It is.

Cross-int. 30. Can you then state why any one should use a globe lens, if the Voigtlander works more rapidly and with equal exactness?

(Objected to as immaterial.)

Ans. I cannot. But my impression is that it is rather a matter of experiment as yet. I think one or more specimens of the globe lens may be found in each of the larger photographing establishments; but, so far as I am informed, no great advantage is claimed for the globe lens in any respect.

Cross-int. 31. Do you know what lens has been used in the photographic department of the Coast Survey in the reduction of their field sheets by photographing, in the last few years?

(Objected to as immaterial.)

Ans. I do not.

Cross-int. 32. Have you read any of the articles of Mr. Mathiot, the head of that department, upon his examinations of the accuracy of different lenses in use in photography, and the results of such examinations?

(Objected to as immaterial and wholly unimportant, and because it assumes that he is the head of any department.)

Ans. I have not.

Cross-int. 33. Can you state any writer of acknowledged reputation on the subject of photography who, within the last five years, has admitted or in any way recognized the Voigtlander lens as an exact lens, or as coming within that class of lenses which could be best used in producing exact results?

(Objected to as immaterial and as assuming a fact that has not been proved to exist.)

Ans. I cannot.

Cross-int. 34. Have you, in fact, Mr. Clark. for the last five or six years, made the subject of photographic lenses a matter of
921 careful study for the purpose of comparison by measurements and experiments to ascertain which would in fact produce the most accurate results, or has your attention and time been mainly spent in working and experimenting upon astronomical instruments?

Ans. I have given little attention to photographic instruments particularly, within the last five or six years, but to optics and optical instruments, generally, my time and attention has been devoted for the last ten years.

Cross-int. 35. In your examination of the scale on Plate 13, Book 1, Volume 2, R. C. P.—I mean the scale attached, but not pasted or affixed to the pasteboard—and of the rider, did you find them to be accurate?

Ans. As accurate as could be possibly expected on such a material as paper, subject to such wrinkling, contracting, and expanding from the dryness or moisture of the atmosphere as that material is.

Cross-int. 36. Understand my question to apply to photographic accuracy, and then please answer it.

Ans. There appears to me all the accuracy that could be photographically obtained upon a material like paper.

Cross-int. 37. With reference to photographic accuracy did you find these scales as accurate as the other work in either volumes "one" or "two," which you examined?

Ans. I don't remember that I found any sensible difference between the two in point of accuracy.

Cross-int. 38. Then you found no appreciable distortion or inaccuracy—photographic inaccuracy—in those scales?

Ans. Nothing sensible.

Cross-int. 39. Now, Mr. Clark, please examine the position of the line marked 108 on the oiled sheet or rider over the line in the loosely-attached scale attached to the book, next to the line of equal length marked 64, which next line if numbered correctly should be numbered 65, and state as now shown to you whether the upper line does not exactly cover the under line.

(Counsel for respondents, unwilling to deprive the plaintiff of what seems to them a fair line of cross-examination, or to interpose the objections made by the plaintiff to the cross-examination of their witnesses by the counsel for the respondents, deemed by them important and material for the investigation of the cause, waive any
922 objection, if any exist, to the line of examination, and leave the witness, without interposing any instructions or objections, to make any present examinations or measurements or not as he shall think best, and in the fair discharge of his duty.)

Ans. It does not.

Cross-int. 40. Will you place it so that it shall, as nearly as you can, using the glass if necessary?

Ans. It covers there now.

Cross-int. 41. Now, holding the paper firm in the position, exam-

ine my finger and see if there is not a constant increasing and appreciable error the farther you move to the left in the degrees of the scale.

(Objected to as immaterial, and so put as incapable of eliciting an answer that can be understood in writing, and because all measurements should be made by the witness without the assistance or direction of counsel other than by the question put and the mode of stating it.)

Ans. There was a difference in six inches of about one-eighteenth of an inch, which was no more than may come from or be excepted in fact from the nature or condition of the material. I do not know how oil affects the paper, whether it would tend to contract or expand it. I know that some kinds of paper, the common manilla paper, is expanded by moisture much more in one direction than another.

Cross-int. 42. Then, Mr. Clark, the fact that the degrees of one scale are taken from the extreme of the field and compared with degrees taken from a position near the centre, and that the error constantly increases as you leave the centre and go towards the edge of the field has no relation to the performance of the lens; and should you find that other comparisons instituted between other scales taken respectively from the centre and edge of the field produced a similar constant increasing error as you approached the edge of the field, that does not and would not affect your answer.

Ans. I should say, considering the minuteness of the deviation and the nature of the material, that one has been wetted and the other oiled since the impression was taken; that that deviation might result from this wetting and oiling and the repeated expansions and contractions from dryness and moisture in the atmosphere; if such deviation were apparent in the glass negative itself, it would require a different explanation from what might apply in these papers.

923 Cross-int. 43. Is it not a well-known fact that when distortions show themselves in photographic work, those distortions or errors increase as you leave the centre of the field and approach the margin?

Ans. Any lens forms a more perfect image exactly at its axis; as you go from that line right or left the image deteriorates slightly or loses something in its sharpness. But if the photographic instrument is properly constructed and adjusted, the lines or objects photographed may not possess the distinctness towards the edges of the field or remote from the optical axis of the instrument, but they will still be exactly in place and free from distortion.

Cross-int. 44. Then you desire it to be recorded, as having been stated by you, that the only change under the circumstances described by you, which can be noticed or measured in passing from the centre to the sides of a field of any size, is a loss of distinctness?

(Objected to by respondents as assuming facts not in proof.)

Ans. A field of any moderate size, I mean; in such a field the loss of distinctness would be the only result. If you are photographing anything like a graduated scale the original scale has its perspective

and is foreshortened to the camera. A glass on which the impression is found is foreshortened in the same degree, and the graduations on such a scale would correspond with the picture accurately, provided the scale and the glass plate on which the image falls, have a position forming ninety degress with the optical axis of the instrument. A very slight tipping of the plate or of the original scale out of that position would destroy the correspondence between the scale and the picture.

Cross-int. 45. Taking a photograph with a field of the size of Plate 13, and having made comparisons of portions of the scale taken from the edge of the field with portions of the scale near the centre of the field, and finding that there exists a constantly increasing error as you leave the centre and approach the edge; and supposing this to be true in any comparison of the scales on that plate so selected and compared, with your knowledge of optics and the working of lenses, it is your opinion, is it, that this error thus so presenting itself arises from the shrinking and swelling of the paper rather than from the fact that a comparison has been made between portions of the scale taken from near the centre and from the edge of the field?

Ans. I think the irregularities observable here, the lack of agreement in the different sections of the scale would be found, if
924 followed up, to proceed entirely from the unequal contraction of the paper after being wetted and oiled—some portion of it possibly to the wrinkling of it. It is possible, also, that the glass from which these impressions are taken may not be quite flat; or either that glass or these scales when arranged for taking the picture may not have been in planes perfectly parallel to each other or at right angles to the optical axis of the instrument.

Cross-int. 46. But it is impossible there should have been any distortion or inaccuracy caused by the lens used, which you say you have not seen?

Ans. I have not seen the lens. It is impossible that there could be any such distortion. If a plumb-line were so located as to cast its image formed by this lens upon the glass negative, near the margin, and it should appear in the impression upon the negative, so that a thread drawn upon it shall coincide with that line from one extremity to the other, no distortion like that in question could possibly take place.

Cross-int. 47. Have you examined the negative of Plate 13, repeating the experiment of comparing a part of the scale taken from the centre of the field with a part taken from the edge of the field?

Ans. Not rigorously.

Cross-int. 48. If, as you say, the distortion you have noted on Plate 13 arises from the shrinking or swelling of the paper, how does it happen that scales taken from near the centre of the field fit exactly those in the centre of the field in their entire length, as also do those on the edge of the field fit those taken from the same place? Will you make the experiment?

(Objected to by respondents as assuming facts not in proof.)

Ans. I will make the experiment. I am not able to trace that per-

fect coincidence in the impressions of the rider and the photograph taken from the same part of the negative which the question assumes. The disagreements which I find in comparing various portions of the scale by means of the rider are so small and so irregularly distributed over the different parts of the photograph that I think they must come from the cause which I have assigned—unequal shrinking after passing the wet part of the process in making the photograph.

Cross-int. 49. If, as you say, these disagreements are so irregularly distributed, how do you account for the fact that, in the
925 comparison of portions of the scale taken from the edge and from the centre of the field, the disagreements are not irregular, and the error constantly increases as you approach the edge?

(Objected to by respondents as assuming facts not in proof and not correct.)

Ans. I have noticed in several instances where I have compared them the scale has appeared a little coarser or finer than the rider, amounting to about the eightieth of an inch in a space of six inches, that is the aggregate. Apparently the scale of the rider is a little more finely graduated than the scale, but I do not find the deviation going on in an increasing but in a regular ratio.

Cross-int. 50. Look at the rider as now placed, and referring to your last answer, state whether or not the error you now notice is such an error as you have last described.

(Objected to as not capable of an intelligible answer to be reduced to writing, because the position of the rider on the paper is not indicated in words.)

Ans. I find in a distance of three inches, nearly as I can estimate by the eye, the disagreement is just about one-half of what it is at six inches, thus confirming my statement that the ratio is regular and not increasing.

Cross-int. 51. It does increase then, but in a regular ratio?

Ans. Yes, sir.

Cross-int. 52. You have said that you have examined Volume 2, Plate 15, Signatures 12 and 13. Will you state whether or not they are side by side in the book, and in the same portion of the field?

Ans. They are side by side.

Cross-int. 53. Look at Plate 17, Signatures 23 and 26, and say whether they are side by side, and in the same portion of the field.

Ans. They are. Those are signatures among those I have examined.

Cross-int. 54. Should you not expect signatures taken from the same portion of the field to be more likely to coincide in their scale of enlargement than two signatures, the one taken from the centre and the other from the edge of the field?

Ans. No more likely to, if the instrument were correctly adjusted and the proportion of distances between the original writing and the negative plate duly secured.

Cross-int. 55. Suppose you were making the examination for

926 the purpose of ascertaining the fact whether the instrument was correctly adjusted, and the proportion of distances between the original writings and the negative plate was duly secured, would you confine your examination to two signatures in the same part of the field, or would you refer to the same signatures in different parts of the field?

Ans. If the photograph were already taken I should examine the same signatures in different parts of the field.

Cross-int. 56. When, prior to this case, have you examined photographic prints and negatives for the purpose of testing the accuracy of the work; and for whom and under what circumstances did you make such examination?

Ans. When engaged in making photographic instruments, some ten or fifteen years ago, I ascertained what the tests were for the due performance of an instrument, and found that it consisted simply in making a picture of a straight line—straight at or near the edge of the field. I have never made such examinations for others; they have only been for my own information.

Cross-int. 57. Whether or not are you familiar with the decimal or metric system for measuring lines or surfaces; and do you or do you not know that the use of that system does away with the difficulties or embarrassments which you have spoken of as connected with the use of what you have called "two-legged dividers?"

Ans. I know the French system, as we call it in the workshops, is exceedingly convenient; but I have always been in the habit of using feet and inches. The rules, scales, or squares used in workshops are more commonly graduated to eighths, sixteenths, and so on, and these are more generally used among mechanics; but we make use of them graduated to tenths and hundredths, though not so commonly used by them. My attention was never brought to this system till so late in life that it was not easily acquired, and the old system is more convenient to me; and I am more ignorant in relation to this question than I could wish or ought to be.

Cross-int. 58. Referring to your answer to the thirty-ninth direct interrogatory, state whether you ever saw any original, genuine signatures which covered as well as you there say the signature Sylvia Ann Howland to papers F. W. P., No. 10 and 15, cover, when superimposed over F. W. P., No. 1.

927 Ans. I don't think I have.

Cross-int. 59. During the examination which you have made in this case what other signatures of Sylvia Ann Howland have you seen, except those to Nos. 1, 10, and 15?

Ans. I have examined a considerable number; I should think all of these—R. C. P., 1 to 31, inclusive, and 32 to 51, inclusive.

Cross-int. 60. From the examination you have made of those last-named R. C. P. papers, (1 to 51,) state whether you found any capital A of Ann where the down-stroke, as it turns or connects with the stroke as it crosses the A, is made in the same way or form as that part of the A is made in the signature to A in No. 1.

Ans. There are none of them exactly like; they differ somewhat.

Cross-int. 61. Do you find in any of these R. C. P. papers any d in Howland which terminates as abruptly as the d in Howland, F. W. P., 1, (signature?)

Ans. Not that I recollect.

Cross-int. 62. Suppose there were a question as to the genuineness of the signature to F. W P., No. 1, would not the differences which have been referred to in the last two questions and answers have as great a weight in determining in your mind that the signature was a forgery, as the differences you have alluded to in your answers to the fortieth direct interrogatory have, in your opinion, as to the genuineness of the signature to F. W. P., No. 10?

Ans. No. If I had these bills of sale—R. C. P.—all before me to guide me when such a question were asked as to No. 1, F. W. P., I think I should say that I observed such a diversity in the form of writing her name, that though they all deviate considerably from F. W. P., No. 1, I could more readily account for such a deviation as accidental with her, than on the supposition that it was a forgery; especially when I notice the regularity with which the pen has been carried, and the freedom from roughness peculiar to traced lines or names written under the evident restraint of hand imposed by great care to follow a given line.

Adjourned to Tuesday, 9.30 a. m.

928 TUESDAY, May 14th.

Cross-int. 63. In your answer to the forty-seventh interrogatory, you have stated that you have made no rigorous examination of the negative from which the scales on Plate 13, Book 1, Volume 2, R. C. P., are taken, as suggested in that interrogatory. Now since those negatives are here present, are you willing, using these proportional dividers, to make such an examination now?

Ans. I am willing to make such an examination; but I could satisfy my own mind better by another method than by using those dividers.

Cross-int. 64. The purpose of the examination is to satisfy the minds of others—will you, therefore, please proceed to make the examination; or make it in any way you may see fit, stating the mode in which you do it.

Ans. I have compared one part of the negative now with the other, taking the four finer scales of the negative, by placing a strip of writing paper at the most remote part of the plate from the centre, marking with a lead-pencil, at three different points, the extremes exceeding five inches; I then remove this paper to the other extremity of the same scale, to each extremity of the other three, and to the middle portions of the four, and then compared my pencil marks with the lines upon the negative. I could have detected an error or disagreement, had it existed, of the two-hundredth part of an inch, but no such disagreement appears. In fact I discover no error or disagreement.

Cross-int. 65. Then this satisfies you, does it not, that the error in the photograph impressions which you found yesterday in these

scales is entirely dependent, as you then stated, upon the shrinking and swelling of the paper, or the want of parrallelism of this plate and the object?

Ans. The examination just made affords the best positive proof that this glass negative and the scales were in planes parallel to each other at the time the picture was taken, and I can find no cause for the disagreement between the oiled and unoiled impressions, except what has been assigned by me, namely, uneven shrinkage of the papers.

Cross-int. 66. Please take the degree on the lower line of this negative, marked 88, and measure from there as accurately as you can one hundred small degrees, and mark it on your slip of paper;
929 now place this measure on the line above it, bringing the point which you had on 88 upon the line in the centre between 64 and 68, which would, if marked correctly, be 66, and state if the one hundred degrees there correspond with the measurement of the one hundred degrees below. I want you to have particular care that you place the points as directed in the question.

Ans. I find a difference in the whole amounting to the one-two-hundredth part of an inch. This portion where the divisions appear the coarser upon the negative falls where the crooks or bending of the glass locates, then a little further from the lens at the time the picture was taken, which, to my mind, fully accounts for this slight enlargement.

Cross-int. 67. Looking at the paper R. C. P., Slip 1, state what is about the width of the pencil mark there?

Ans. They are so irregular and bear such evidences of tracing that I could hardly say.

Cross-int. 68. Give us your best impressions as to the thickest mark.

Ans. The thickest part of the largest line would be about the sixty-fifth or seventieth of an inch.

Cross-int. 69. And you consider then, Mr. Clark, that with an implement for measurement a sixtieth or seventieth of an inch broad, you can make a determination and testify to within the one-two-hundredth part of an inch, and more correctly than by the use of the proportional dividers?

Ans. I can estimate the centre of such a line, even if it were the twenty-fifth of an inch, sufficiently near for the purpose. But I would rather use the dividers, if the material would permit an indentation, to hold the point and prevent its slipping.

Cross-int. 70. This examination which you have just made so carefully and given us a result within one-two-hundredth part of an inch, showed did it not, that this error which you say exists to that amount displayed itself upon measuring from the centre to the side of the field?

Ans. It did.

Cross-int. 71. Now, bearing in mind that the examination you made yesterday of the photographs taken from this plate showed an error or distortion in measuring from the centre to the side of the field, and that the same occurs in making a like measurement upon this

negative, do you wish to be understood to say that in the
930 former case the distortion arises from the shrinking or swelling of the paper, and in the latter from some local irregularity on the surface of the plate, and has nothing to do and can have nothing to do with distortions produced by the lens exhibited by the comparisons of scales taken from the centre and sides of the field?

(Objected to as assuming facts and alleged combinations of facts not proved.)

Ans. The same does not occur; the disagreements are several times greater in the paper than in the glass; and in both cases must, in my own mind, be assigned to causes I have explained, namely, unequal shrinking of the paper and a slight warping of the glass; for it must be remembered the rays which go to make the image near the margin of the picture strike the plate very obliquely; and if it be located at that point by such bending or warping a little further from the lens the impression will fall a little nearer to the edge of the plate than it would in case the plate were quite flat.

Cross-int. 72. If you should repeat this experiment with this negative, selecting scales from other portions of it and obtain the same result, you would ascribe it, would you, to the warping of the glass, and not to the distortion of the lens?

Ans. I certainly should, if the glass were warped at the points under comparison in such directions as to make it apparent, as in this case, that such was the cause.

Cross-int. 73. You are not asked, Mr. Clark, whether if glass is warped it distorts, but whether, under the conditions described in the last question, you should unhesitatingly assign the cause of error to the warping.

Ans. I should unhesitatingly assign the cause of the error to the warping.

Cross-int. 74. You have discovered errors then, differing in quantity, but appreciable, in these scales and the negative from which they are taken, in making measurements from the centre of the field to the margin, have you not.

Ans. I have; amounting, as I have stated in the case of the negative, to the two-hundredth part of an inch upon a distance of a little less than half the breadth of the plate. I would say that I have stated it less in amount than exists. It might be one-one-hundred-and-sixtieth of an inch. This, I think, is the maximum of difference.

931 Cross-int. 75. Should you be astonished to hear that men whose daily occupation is the exact measurement of linear surfaces, and who are as fair and unprejudiced as I suppose you to be, have made the measurements in the books of the scales which you have, with results showing a greater amount of error and distortion?

(Question withdrawn.)

Cross-int. 76. You are sixty-three years of age, are you not, Mr. Clark? [Your eyes are not so good as they once were, are they?] and you use glasses, do you not?

(Objected to second clause of question as immaterial.)

Ans. I am. My eyes are as good for distant objects as ever, but they will not focus for the inspection of near objects or reading fine print without the interposition of a lens. I do not perceive but that my vision is as good as ever when suitable glasses are used. I do use glasses.

Cross-int. 77. Your occupation has been for a long number of years to manufacture lenses through which to view heavenly bodies, has it not?

Ans. Yes, sir.

Cross-int. 78. How many years since you were engaged in making patterns for calico-printing?

Ans. I never was engaged in designing for these. Engraving was my department. I abandoned it in 1835, after following it for nine years.

Cross-int. 79. The tracings you have done have been connected with this pursuit, have they not?

Ans. Not entirely, partially. Also in the painting of miniatures and portraits.

Cross-int. 80. In making these tracings after they were collected, did you measure each part of them with care and nicety with the best instruments to determine how far they varied from the original pattern?

(Objected to as immaterial.)

Ans. Never that I recollect have I had occasion to do so.

Cross-int. 81. You have never been a teacher of the art of penmanship, have you?

Ans. Never.

Cross-int. 82. Have you ever been called on to measure hand-writing, or the pictures produced from negatives in photographs?

932 Ans. Never, until this case.

Cross-int. 83. You say you made a lens after the rule of making the Voightlander lens for Mr. Whipple; was Mr. Black at the time his partner?

(Objected to as examination upon matter already examined.)

Ans. I am not able to say.

Cross-int. 84. When were you first called upon to examine the photographs and documents in this case, and by whom?

Ans. I think on the 7th of this month; by Mr. Whipple.

Cross-int. 85. Was Mr. Southworth with him?

(Objected to as immaterial.)

Ans. He was not.

Cross-int. 86. Have you gone over any part of your examination of these plates and documents with Mr. Southworth?

Ans. I looked them over in his presence and company.

Cross-int. 87. How many times has he been with you at the examination of them?

Ans. Three times.

Cross-int. 88. How long were you together each time, and has Mr. Southworth talked with you freely about the case?

(Objected to, not as calling for conversations between Mr. South-

worth and the witness, if any took place, but for his opinion of them. Respondents do not object to the conversations themselves.)

Ans. I should think we might have been together at first half an hour; next, perhaps, from an hour and a half to two hours, talking much of the time on various subjects, and looking over my grounds, garden, and house; the next morning, the third and last time, I called at his office by appointment; after stopping a short time we both came to this office; he left on some business in the course of the forenoon, and returned here and I went to dinner with him; that I find makes a fourth time that we were together. He has not talked freely with me about the case; he pointed out to me the course of investigation he desired me to make, stating that he wished to leave me to form an independent judgment.

Cross-int. 89. You do not mean to say, do you, that in no one of these four interviews, when you and Mr. Southworth were together, he did not intimate his own views or belief or testimony as to any part of the case.

933 Ans. I cannot say but that he did, but expressed a repeated desire that I should pursue an independent course and form an independent opinion.

Cross-int. 90. Did he tell you that his testimony had been assailed by the witnesses for the plaintiff, or anything to that effect?

Ans. He did.

Cross-int. 91. When Mr. Whipple called on you, did he say to you that the accuracy of the work done at his establishment had been assailed, and that Mr. Southworth would call upon you on the subject?

(Objected to as immaterial.)

Ans. He did not so represent it. He did not say Mr. Southworth would call on me on the subject, but he proposed on the spot that I should take a seat in his vehicle and ride with him to his room. I did so, where he left me, and after half an hour returned with Mr. Southworth.

Cross-int. 92. So that at all your several examinations of these photographs and documents, prior to your testimony in this case, Mr. Southworth was present, was he not?

(Objected to as assuming a fact not proved.)

Ans. In a very small proportion of the time, he left with me a set of the photographs at my house at the second interview, pointing out to me which was the original and which the supposed forgeries, the enlarged photographs and the photographs of the numerous signatures of Sylvia Ann Howland which have been shown here, desiring me to examine at my leisure, and make such comparisons as I might deem desirable to enable me to reach a true and correct view of the case.

Cross-int. 93. Did he leave with you the originals R. C. P., 1 to 51?

Ans. I think all I have are duplicates without marks or numbers.

Cross-int. 94. Did he state to you that there was a large sum of money involved in the controversy?

Ans. He did.

Cross-int. 95. Did he state to you that you would receive a large compensation for your services, or anything about compensation?

Ans. The first that was said to me as to compensation was said by Mr. Whipple when he called. I stated to him that it was very inconvenient for me to leave my work in the shop; that I was in the midst of planting my garden, and ordinary witness fees, unless
934 I was compelled to serve would be no consideration. He assured me that I would be reasonably rewarded. Mr. Southworth afterwards, in speaking with me of compensation, informed me that it would be satisfactory to myself, but no specified sum has ever been named.

Cross-int. 96. Did either of them inform you what your compensation would be in case your views did not concur with theirs in your testimony?

Ans. They did not.

Cross-int. 97. Is the plate marked Figure 2, on Plate 4, Volume 2, Book 1, R. C. P., pasted on the page? and, if it is, state whether or not in your opinion that has any tendency to alter the length of the signatures, and in what way, if any.

Ans. It appears to be. It might possibly produce a slight change, but not much; I could not tell which way.

ALVAN CLARK.

TUESDAY, *May* 14, 1867.

Deposition of George A. Sawyer.

I, George A. Sawyer, of Dorchester, in the county of Norfolk, doing business at Boston, in the county of Suffolk, aged forty-four, on oath say: That my occupation is that of a teacher of penmanship and book-keeping and an accountant. In connection with my teaching I have made the study of handwriting and its peculiarities a subject of study for the past ten years. I have testified in court upon the matter of handwriting disputed.

(The last clause objected to by plaintiff's counsel as immaterial.)

And the examination then proceeds on the part of the respondents, by T. M. Stetson, esq., of their counsel, as follows:

Int. 1. Do you mean that you have thus testified as to matters of opinion?

(Objected to for form and otherwise. Withdrawn.)

935 Int. 2. How has your testimony been connected with matters of disputed handwriting?

(Objected to as immaterial.)

Ans. In regard to the genuineness of handwriting, on the grounds of forgery.

Int. 3. Please to state whether your testimony related to matters within your specific knowledge, or whether they related to matters of skill and experience.

(Objected to as leading and otherwise.)

Ans. They related to matters of skill and experience; to opinions I formed in consequence of my skill and experience.

Int. 4. Whether or not have you been consulted as to matters of handwriting; and, if so, to what extent?

(Objected to as immaterial.)

Ans. I have been frequently, in regard to signatures and handwriting.

Int. 5. Are you or not familiar with the mode of executing exhibition pieces of manuscript; and whether or not has your business called you to the examination and criticism thereof, and instruction in relation thereto.

(Objected to as leading and immaterial.)

Ans. Before answering this question I should like to know what is meant by exhibition pieces.

Int. 6. I mean pieces made of a variety of showy and ornamental manuscript, involving a great use of the powers of the pen.

Ans. I am familiar with them. It has to a great extent called me to such examination, criticism, and instruction.

Int. 7. Please to state whether or not Mr. Thaxter, of counsel for plaintiff in this case, has visited you at your place of business in reference to this case.

Ans. He has not to my knowledge.

Int. 8. Whether any of the gentlemen representing the plaintiff in this case have done so?

(Objected to as immaterial and as leading.)

Ans. I think Mr. Bartlett, Mr. Francis Bartlett, called on me.

Int. 9. Please to state whether or not you have examined the originals now before you, F. W. P., Nos. 1, 10, and 15.

(Objected to as immaterial.)

Ans. I have.

Int. 10. Assuming the signature to No. 1 to be genuine, state what is the result of your examination and your judgment as to the genuineness of the signatures to Nos. 10 and 15.

(Objected to on the ground that in the state of the pleadings in this case the question is not open to the respondents, and also that it does not appear that the witness is an expert in relation to the matter inquired of, and because it is not in rebuttal to the plaintiff's evidence, and is merely cumulative evidence on that part of the case where the respondents have closed, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and not waiving this objection.)

936

Ans. They are not natural; they are studied. They exhibit great effort to make them look exactly like No. 1. Superpose 10 on 1. they will almost perfectly coincide throughout, although there is no line to guide the hand in writing. Match the margins of the papers 10 and 1 and the signatures will superpose; the distance from the margins on either side of the signatures of 10 and 1 are the same on the corresponding sides. There is uniformity in length of signatures and spacing of the letters. No. 1 indicates a trembling hand, but perfectly natural movement. No. 10 shows great effort to imitate No. 1, and although quite successful in some parts, yet fails in others.

The effort to imitate a trembling hand exhibits more of a vibratory movement. There is evidence of retouching, and this retouching is apparently done with great care. Nos. 10 and 15 exhibit more firmness of hand than No. 1. It is remarkable that the signatures of 1 and 10 coincide so perfectly without any line to guide the hand. The impression that I received when I first saw the signatures 1 and 10 was, that No. 10 was not natural; I have seen nothing in subsequent investigation to change that impression.

Int. 11. Please state as to number 15 signature.

(Objected to as above.)

Ans. It is not so perfect as No. 10. The signature of 15 when placed upon No. 1 will coincide in parts by slipping the paper.

Int. 12. Have you stated your opinion as to the genuineness of No. 15 signature? If not, please to do so.

(Objected to as above.)

Ans. I intended in my previous answer to cover both 10 and 15. They are not genuine in my judgment.

Int. 13. Please to refer to No. 10; inspect the capital A in that signature, and state your views fully in regard to the same.

(Objected to as above.)

Ans. The movement in the formation of A exhibits a vibratory motion. The pen appears to have rested in the upward move-
937 ment before reaching the top. The downward movement shows two marks near the top; the rest of the A exhibits more firmness of hand than is exhibited in A in No. 1. The last mark from the bottom is formed differently in No. 10 from No. 1; I meant the upward turn to form the loop.

Int. 14. State whether in your opinion the double lines in the top of said A could or could not have been made with a single stroke of the pen. If not, state why not.

(Objected to as above and as assuming a fact and as leading.)

Ans. I think they could not, because the ink from the pen would naturally have filled and made one stroke instead of two.

Int. 15. Are you able to state whether the pen was lifted from the paper at the lower ends of said double lines? And if so, please to state.

(Objected to as above.)

Ans. I should think it was.

Int. 16. How is it in the case of the A in No. 1 at the same point?

(Objected to as above.)

Ans. It is connected all the way.

Int. 17. You have stated that in your judgment the signatures to Nos. 10 and 15 were not genuine; are you able to state all the grounds that cause you to arrive at that judgment?

(Objected to as above and as leading.)

Ans. I am not able to state all the reasons. I received an impression at first that they were false. It is my conviction; it was my conviction when I saw it at first. [Detectors of counterfeit money and those in the habit of studying manuscript often form an opinion without being able to express the reason in words.] (Last clause objected

to by plaintiff's counsel as mere hearsay, and as giving the opinion of witness as to the habits of mind of others.) It would be impossible for me to express in words all the reasons for not thinking those signatures 10 and 15 were genuine.

Int. 18. Have you or not examined the plaintiff's large book of photograph marked R. vs. M., F. W. P., and purporting to contain the signatures of J. Q. Adams, Joseph B. Spear, C. A. Walker, Stephen Fairbanks, Saml. W. Swett Geo. C. Wilde, F. W. Palfrey, and so forth, with the accompanying riders or transparencies?

Ans. I have.

938 Int. 19. State whether or not your examination of said book had any effect to modify your opinion which you arrived at in regard to the genuineness of 10 and 15.

(Objected to as above.)

Ans. It had not.

Int. 20. State whether or not you found any signatures in said book which had the same kind of coincidence as that of 10 and 1, F. W. P.

(Objected to for form and as above. Withdrawn, and at the request of plaintiff's counsel it is stated that it is done after a pause by the witness.)

Int. 21. Please state why you made the slight pause noted by the magistrate above.

Ans. I did not fully comprehend what the question meant; whether it meant the placing one signature over the other, or whether it meant that the signatures were alike so far as writing on a line, or its equivalent.

Int. 22. The question relates to matching the signatures one over the other. State whether you found any signatures in said book which matched as you say F. W. P., 10. matches upon F. W. P., 1.

(Objected to for form and as to interrogatory ten.)

Ans. None so perfectly.

Int. 23. Please refer to the documents before you marked Wilde, F. W. P., 4, and Wilde, F. W. P., 3, and state what examinations you have made, and the results.

Adjourned to Wednesday, May 15, 10 a. m.

WEDNESDAY, *May* 15.

Direct examination resumed:

Ans. I compared these signatures by superposing the G; the rest of the signature would not superpose. When the margins were placed together the signatures would not superpose. No arrangement of the paper would make them superpose. I observed the heavy water-mark, which is a guide to the hand in writing, which does not exist in the paper on which the will is written. I mean F. W. P., No. 10, and F. W. P., No. 1. The initial point of the G is farther from the right margin in 3 than in 4. The distances of the letters vary, especially in the "l, d, e" letters.

939 Int. 24. Please look at F. W. P., No. 15, and say how the water-mark of the said G. C. Wilde papers compares with the water-mark of F. W. P., 15.

(Objected to as to tenth interrogatory.)

Ans. This water-mark in the Wilde papers seems to be a horizontal straight water-mark. In F. W. P., 15, I do not see any straight water-mark.

Int. 25. Please refer to the papers before you marked Spear, 45, F. W. P., and the paper marked Spear, 10, F. W. P., and state whether you have examined the same; and, if so, please to state in full the results of your examination.

(Objected to as to last.)

Ans. I have examined them; I superposed the "p" in Spear and found the margins oblique; they were not in correspondence. I mean of course the margins of the paper, the right margin. I found the same result when I superposed the "p" in Joseph and the "h" in Joseph. The papers are of different lengths, and the left margins irregular. Bringing the top and the right margins together and the signatures, would not coincide.

Int. 26. Upon inspection with the eye of the said Spear papers, Nos. 45 and 10, what comparative similarity or dissimilarity do you observe in the letters e, p, h, and s, p, e, a?

(Objected to as leading and as above.)

Ans. There is a difference in the distances. I do not fully understand the question.

Int. 27. Have you any minutes of your examination relating to this point? If so, please to examine them.

(Plaintiff objects as to twenty-fifth interrogatory.)

Ans. I have in brief; I will examine them; I have no minutes in regard to that particular point.

Int. 28. In said "e's" in the Josephs which, if either, has the larger loop; in said "p's" in the Josephs, in the bottom of their semi-circles, does one or both have a loop; in the "h's" in said Josephs, does one or both have a loop at the top, and if so, which; in the capital "S's" does one or both have an opening in the bottom loop; in the "p's" in Spears does the returning curl in the semi-circle touch the right-hand mark of said letters in one or both; in the "e's" in the Spears which, if either, has the larger loop; in the "a's" in the Spears which is the longer letter in horizontal length?

(Objected to as leading and as above.)

940 Ans. No. 45 has the larger loop in the "e" in Joseph. In No. 10 the "p" in same word has a loop. No. 45 has no loop in the "h's" in same word, only No. 45 has a loop at the top. In the capital "S" in Spear, No. 45 only has an opening in the bottom loop. The returning curl in the semi-circle in the "p's" touches the right-hand mark of said letter in said word only in No. 10. In the "e's" in same word, No. 45 has the larger loop. In the "a's," that in No. 10 is the longer horizontally.

Int. 29. State whether you have examined in superposition the papers marked Adams, F. W. P., 51, upon the paper marked Adams, F. W. P., 58, now before you; and if so, state the results of your examination, making such reference to your minutes, if you have any, as needful to enable you to state with accuracy.

(Objected to as to tenth interrogatory.)

Ans. I have made such examination. The print and scroll work match, but the signatures do not. I could not make them by any arrangement of the paper.

Int. 30. When the print and scroll work or any of it is in superposition, state whether the signatures are or are not in superposition.

(Objected to as leading and otherwise.)

Ans. They are not.

Int. 31. State whether you have examined the papers now before you, marked Fairbanks, F. W. P., 2365, upon the paper marked Fairbanks, F. W. P., 1423; and, if so, please state the results of your examination.

(Objected to as to tenth interrogatory.)

Ans. I have so examined these papers. The print and scroll work match, (but the numbers do not.) When the print and scroll work are matched the signatures will not superpose. In regard to figures, the printed figures do not match. I refer to the numbers printed in after the word No. on the right hand, under the word bank.

Int. 32. State whether there is or is not any mode of superposing said Fairbanks signatures with a view to matching the same that will cover any single one of the under letters.

(Objected to as above.)

Ans. I did not find any.

Int. 33. Place in superposition the printed lines on which said signatures are written, so as to come as near a match as would then be practicable, and state whether any of the under letters are covered.

(Objected to as above.)

941 Ans. I do not find any that are covered.

Int. 34. Place the initial points of the signatures in exact superposition, and then say whether the print is or is not in superposition.

(Objected to as above.)

Ans. It is not.

Int. 35. State whether you have examined the documents now before you, marked respectively Walker, F. W. P., 679, and Walker, F. W. P., 669, each severally in superposition; and, if so, state the results of your examination.

(Objected to as above.)

Ans. I have so examined them. The print is identical. When the print is matched, the under letters of the signature are distinctly seen. I mean the two signatures will not superpose. The letters of the under signature are seen. When the signatures are matched as nearly as possible, the print is thrown out of correspondence. Match the W, and the lines on which the signatures are written do not superpose. Match the A, and the rest of the signature is out of superposition. The C will not match itself.

Int. 36. Match the final er of the two signatures, and state whether the residue of said signatures are or are not in superposition.

(Objected to as above.)

Ans. They are not.

Int. 37. Please examine the white arches under the two W's by

inspection together and separately, and say whether they are or are not of the same shape.

(Objected to as above and leading.)

Ans. They are not.

Int. 38. State whether you have examined the documents now before you, marked Swett, F. W. P., 41, on Swett, F. W. P., 12; and, if so, state the results of your examination.

(Objected to as to tenth interrogatory.)

Ans. I have. The print is not uniform, and, therefore, it would be impossible to tell, in case parts of the signature superpose, whether it were an accident in writing or in print.

Int. 39. Do you mean at a time when some portions of said print should also be in superposition?

(Objected to as leading and otherwise.)

Ans. I do not.

Int. 40. If signatures were in superposition and some portions of the printed page, account, or check, as the case might be,
942 should be in superposition and other portions not, owing to the lack of uniformity in the printing, would it or not be possible to say whether the circumstance that certain portions of the printed matter matched was an accident of the printing or of the signature?

(Objected to as leading and as above.)

Ans. I should think it would.

Int. 41. I am not sure whether you understand the question; will you please to explain your view?

(Objected to for form and otherwise. Question withdrawn.)

Int. 42. Please to explain.

(Objected to as to tenth interrogatory.)

Ans. If the print was not uniform and some parts of it corresponded with each other, and the signatures also, I should think it not difficult to tell in which the accident might consist when the signatures also corresponded as well as the parts of the print in connection with the print.

Int. 43. If a printed page or check is not printed with uniformity, but with more or less accidental variations or differences in the words, lines, scrolls, etc., it would have its own accidental matchings or agreements, would it not?

(Objected to for form and as above.)

Ans. It would.

Int. 44. If such checks lacking in uniformity were superposed without being signed at all, and certain portions or parts thereof were found to superpose when the rest of such printed matter did not superpose, would you or not attribute such partial superposition to the accidental manner of printing?

(Objected to as above.)

Ans. I should.

Int. 45. Please to state generally any other results, if there are any, you have observed as to the similarity or dissimilarity of said Swett's said signatures in your examination thereof.

(Objected to as to tenth interrogatory.)

Ans. Matching the initial point, and none of the rest of the signature will superpose, not even the whole of the first S. These signatures will not superpose by any arrangement of the paper.

Int. 46. How is it as to the length of the t crossings?

(Objected to as above and for form.)

Ans. Much longer in 12 than 41.

943 Int. 47. State whether the bottoms of S in Samuel are in the same style of writing or are not, and why.

(Objected to as to twenty-fifth interrogatory.)

Ans. They are not. The bottom of the S in 12 is carried round across the upward stroke until it crosses the body of the letter. In 41 the bottom of the first S is carried round and stops upon the upward stroke with a dot.

Int. 48. How is it as to the style of writing the bottoms of S in Swett in these two signatures?

(Objected to as to tenth interrogatory.)

Ans. In No. 12 the bottom is carried round across the upward stroke and forms a loop; it does not touch the main body of the letter on the downward stroke. In 41 the bottom of the letter is carried round across both the upward stroke and the main body of the letter.

Int. 49. Please refer to the documents now before you, marked 246, Palfrey, W. S. D., on the one marked 270, Palfrey, W. S. D., and state whether you have examined the same; and, if so, give the results.

(Objected to as above.)

Ans. I have examined them. The print and scroll work match; the signatures do not. Neither of the capitals will match. If the "rey" in Palfrey is matched as nearly as possible, the discrepancy in the matching of the rest of the signatures is very marked. The y and f in 246 are longer than in 270. The F in 270 is longer than in 246—matching the signatures as nearly as possible. The print is thrown out of correspondence.

Int. 50. Matching the P's, describe the then condition of the W's.

(Objected to as above.)

Ans. They are out of superposition.

Int. 51. To what extent? Please describe very fully.

(Objected to as above.)

Ans. Excepting where the marks cross each other, the whole of the under letters is distinctly seen.

Int. 52. When the Y's are matched, state how far apart are the bottoms of the F's,

(Objected to for form and as above.)

Ans. I should think an eighth of an inch.

Int. 53. And how far apart are the left ends of the little straight line printed for the signatures?

(Objected to as above.)

944 Ans. I should think an eighth of an inch.

Int. 54. In your examination of said signatures Wilde, Adams, Spear, Walker, Palfrey, Swett, and Fairbanks, and in your examination of the signatures F. W. P., 1, 10, and 15, have you or not con-

sidered the matter of a base-line for aid in the writing of signatures, or some horizontal and distinct water-mark, in relation to the uniformity or want of uniformity of signatures? and, if so, please state your results and opinion fully.

(Objected to as above.)

Ans. I have considered that under the signatures Spear, Adams, Fairbanks, Walker, Swett, and Palfrey, I find a straight line which is a guide to the hand in writing. The signature of Wilde is upon paper which has a heavy water-mark, which answers the same purpose. With this advantage, not one of those signatures seems to me so perfect as the Howland signatures 1 and 10, F. W. P. I observe a coincidence in the signatures 1 and 10, F. W. P., which seems impossible without design; that is, the fact that after starting they coincide throughout their course without the aid of a ruled line or its equivalent. In this coincidence the analogies of the signatures of Wilde, Spear, Adams, Fairbanks, Walker, Swett, and Palfrey fail, as they are upon a straight line or its equivalent. When among several signatures so noted for uniformity and apparent correspondence I find none so coincident in all respects as the Howland signatures, F. W. P., 1 and 10, I am satisfied that Howland, F. W. P., No. 10, could not have been so perfectly written in imitation of number 1, F. W. P., except by design. Another important fact which I have considered is the length of the Howland signatures; with the exception of Fairbanks, the others are shorter signatures—are shorter than the Howland. Uniformity is easier in a short signature than in a long one. There is but one way of matching the Howland signatures F. W. P., 1, and F. W. P., 10, while among several ways it is doubtful which is the best superposition of the signatures of Walker and Spear, thus showing to my mind design in one and only accidental approximation in the others.

Int. 55. Please examine the last page of F. W. P., No. 1, and state what words in your judgment, if any, were there written after the writing of the body of the instrument.

(Objected to as to tenth interrogatory.)

945 Ans. The word "page," "third," under the word third; "also Executor of the second page of this will; "Eleventh" and "January." That is all I see.

Int. 56. Please inspect the volumes R. C. P., Book 1, Volume 1 and Volume 2, and say how many times the photograph of bill of sale marked R. C. P., 4, occurs.

(Objected to as above.)

Ans. Twice in Volume 1, in Plate 17 and Plate 18. In Volume 2, twice in numbers and twice on oiled paper not numbered.

Int. 57. In your fifty-fourth answer, please state in what sense you use the word shorter signature.

(Objected to as above.)

Ans. I mean signatures containing a less number of letters.

Int. 58. Please examine Exhibit F. W. P., 14, containing the words "copy—Hetty H. Robinson for S. A. H.," and say whether

you are able to state whether said words were written at one time or at different times; and, if so, state your judgment on that point.

(Objected to as above.)

Ans. My opinion is they were not all written at the same time.

Int. 59. Which of said words do you think were written at one time, and which at another.

(Objected to as above.)

Ans. I think Hetty H. Robinson was written at one time, and the words "Copy" and "for S. A. H." at another.

Int. 60. Have you or not examined the bills of sale, R. C. P., 1, 51? and, if so, state whether the retouching visible therein is or is not, in your judgment, the same kind of retouching or for the same purposes as that visible in signature to F. W. P., 10.

(Objected to as assuming a fact not proved, as leading, and otherwise.)

Ans. I have examined them; the retouching is of a different character.

Int. 61. From the retouching in said bills of sale, what, if anything, should you infer as to the vision of the writer?

(Objected to as leading and as to interrogatory ten.)

Ans. The retouching bears evidence of imperfect eyesight.

946 Cross-examination:

And the witness being cross-examined by the counsel for plaintiff testifies as follows:

Cross-int. 1. When were you first applied to—you for your services in this case?

Ans. I am not sure whether August or September last.

Cross-int. 2. By whom was this application made?

Ans. Mr. Stetson.

Cross-int. 3. What examination, if any, did you make at this time?

Ans. I made none then.

Cross-int. 4. Were you not furnished with photographs by Mr. Stetson?

Ans. Not then.

Cross-int. 5. When were you first furnished with photographs?

Ans. In October or November last.

Cross-int. 6. Did you make any examination then?

Ans. I did.

Cross-int. 7. Under whose direction?

Ans. Mr. Eliot's.

Cross-int. 8. Where was this examination made?

Ans. At the Tremont House, Boston.

Cross-int. 9. Who else were present?

Ans. No one during the examination.

Cross-int. 10. At any time who were present?

Ans. Mr. Stetson.

Cross-int. 11. You were told the large amount involved in the suit at that time?

Ans. I was not.

Cross-int. 12. You have been told?

Ans. I think I never have.

Cross-int. 13. By no one?

Ans. I don't recollect of any one.

Cross-int. 14. Sure of this?

Ans. Quite sure.

947 Cross-int. 15. You never have never spoken to anybody about the large amount involved, have you?

Ans. Incidentally I have.

Cross-int. 16. Not ever having been told by any one, how could you mention it incidentally to any one?

Ans. By common report; I have heard people talk about it.

Cross-int. 17. What do you mean then by your answer to the twelfth cross-interrogatory?

Ans. I thought the question was confined to counsel in the case; my answer was confined to them.

Cross-int. 18. Then when you were applied to, you had heard that a large amount was at stake?

(Objected to as assuming a fact not proved.)

Ans. I do not think I had. I had only known from what I had read in the papers; I had no conversation in regard to it.

Cross-int. 19. When were you applied to the second time by the counsel for the defendants?

Ans. I have mentioned twice.

Cross-int. 20. When was the next application made to you by them?

Ans. I cannot fix the time; they have been to see me several times.

Cross-int. 21. When was the last application?

Ans. I think last Saturday.

Cross-int. 22. When before that had you seen counsel?

Ans. Sometime during that week.

Cross-int. 23. And when before that?

Ans. About a week or two before.

Cross-int. 24. What is the longest interval that has occurred between the first and last times that you have seen counsel?

Ans. I should think one or two months; I can't say exactly.

Cross-int. 25. Can you state about when those one or two months were?

Ans. Sometime in the winter.

Cross-int. 26. Can't you state the months?

Ans. Sometime in the three winter months.

Cross-int. 27. Have you stated to anybody that your services had been secured in this case, saying that it was a large case, a large amount involved.

948 Ans. In conversations with friends I have mentioned that I had been consulted.

Cross-int. 28. Have you not exhibited or shown to persons the

photograph signatures of F. W. P., 1, 10, and 15, and pointed out their peculiarities, other than counsel for the defence?

Ans. I have to some acquaintances to a limited extent.

Cross-int. 29. Have you not now, or have you not had for some months, at your office a photograph or photographs, which you have used for this purpose?

Ans. I have had photographs there which I have been in the habit of examining, more particularly in regard to genuineness of signatures.

Cross-int. 30. Have you never exhibited those photographs?

Ans. I have.

Cross-int. 31. Who has pointed out to you the line of examination, and the points to which you have testified here?

(Objected to as assuming a fact not in proof.)

Ans. Whatever points of examination have been made by the counsel for defence.

Cross-int. 32. Has it not been indicated to you in every case what it was desired to prove?

Ans. I think not.

Cross-int. 33. Then, Mr. Sawyer, these documents, photographs, and checks have been placed in your hands, and you have proceeded, without any indications from the counsel, to investigate and note the covering of the signatures of the printed work, scroll work, numbering, the absence or presence of a base-line, the agreement or disagreement of the sides of a sheet, the peculiar formation of the letters, whether or not the words were written at one and the same time, and all this without a suggestion from counsel?

(Objected to as assuming an inference not justified by anything the witness has stated.)

Ans. I have said nothing to warrant such inference. When I first saw papers I did not know which side the counsel who applied to me was on, and I did not know till long after I had expressed an opinion. The counsel have called my attention to points in this case to which I have testified, but I think not to all.

Cross-int. 34. You have stated in your direct examina-
949 tion that the impression that Nos. 10 and 15, F. W. P., are forgeries, the reasons for which you find it so difficult to express in words, is one you have had from the start; did you state this opinion to counsel for the defence before the interval of two months of which you have spoken?

Ans. I think I did.

Cross-int. 35. You have said that Mr. Francis Bartlett called at your office. Can you say when it was?

Ans. I should think early in March; I would not be positive.

Cross-int. 36. Was it not in the interval of two months of which you have spoken?

Ans. I don't recollect.

Cross-int. 37. Had it not been some time since you had heard from or seen the counsel for the defendants, and did you not so state?

Ans. It had been. I don't recollect that I stated it.

Cross-int. 38. Will you swear that you did not say so?

Ans. I do not swear that I did not nor that I did; I don't recollect.

Cross-int. 39. Please state what took place at that interview.

(Objected to as immaterial.)

Ans. It was a brief one. I think Mr. Bartlett asked me in regard to examination of handwriting; and I mentioned that I had been consulted in this case. I don't recollect all the conversation that passed.

Cross-int. 40. Did you tell Mr. Bartlett by whom you had been consulted?

Ans. I do not remember.

Cross-int- 41. Didn't you show Mr. Bartlett the photographs?

Ans. I did.

Cross-int. 42. Didn't Mr. Bartlett tell you that he appeared for the other side, and that the testimony for the defence had been taken?

Ans. He told me he appeared for the other side. I do not recollect what he said about the testimony.

Cross-int. 43. Did you not get the impression from him that the testimony for the defence had been closed?

(Objected to in form and substance, as calling not for the substance of conversation but for the mere impression of the witness.)

Ans. I did not.

Cross-int. 44. Did you not express any surprise that your testimony had not been taken?

950 Ans. There is no impression on my mind now in regard to it. I do not remember.

Cross-int. 45. You are willing to swear, then, are you, that you expressed no surprise to Mr. Bartlett?

(Objected to for form and substance.)

Ans. I could not say positively; I received no impression strong enough to give sufficient testimony about it.

Cross-int. 46. After this interview with Mr. Bartlett did you not agree to come round to his office, and did you not so come?

Ans. I did.

Cross-int. 47. Who did you find there pr[illegible]?

(Objected to as immaterial.)

Ans. Mr. Francis Bartlett, and another gentlem[illegible] whose name I did not recollect; that is all I remember. (Mr. Thaxter having come in, the witness says:) That looks like the man.

Cross-int. 48. State what took place at that time.

Ans. Something was said to me about examining signatures; I stated that I had given an opinion. I can't refresh my mind further.

Cross-int. 49. Did you express at that time any opinion as to value of the testimony of experts as to handwriting?

Ans. I do not recollect as I did.

Cross-int. 50. Didn't you say that you considered it a most uncertain class of evidence, that evidence of that kind could be got to prove any position, and that after all it was nothing but a matter of opinion?

(Objected to as immaterial.)

Ans. I do not recollect distinctly what was said, but think there was something said, though not in those strong terms.

Cross-int. 51. Are you willing to swear, here in the presence of Mr. Thaxter and Mr. Bartlett, that you did not substantially express the opinions stated in the fiftieth cross-interrogatory?

(Objected to as immaterial.)

Ans. I cannot recollect the language. I am not willing to swear positively, because I do not recollect. I think the language is stronger than I should naturally use.

Cross-int. 52. Did you ever express, either to Mr. Thaxter or Mr. Bartlett, an unwillingness to act for them, and did not Mr.
951 Thaxter say to you that as you had been applied to for the other side he didn't think it proper to ask you to act?

(Objected to as immaterial and leading.)

Ans. I did; and also expressed the hope that I should not be called on either side; that I had given an opinion. Mr. Thaxter expressed the opinion referred to in the question.

THURSDAY, *May* 16*th*.

Cross-int. 53. What conversation, Mr. Sawyer, have you had with the counsel for the defendants or with any one, since the adjournment yesterday afternoon, in regard to your cross-examination.

Ans. Mr. Stetson asked me to think the matter over and see if I could not recollect the conversation at Mr. Bartlett's office; I told him that I would try—that I had no idea or recollection of any such language as I had been asked about.

Cross-int. 54. That is all the conversation then with Mr. Stetson, is it?

Ans. Not all.

Cross-int. 55. State all the conversation you had.

Ans. Afterwards I told him that I could not recollect using any such language or having any such idea.

Cross-int. 56. Is that all?

Ans. It is not.

Cross-int. 57. State all.

Ans. My opinion was then and is now that the judgment of some persons in matters of mere opinion in regard to handwriting and signatures is better than that of others.

(Objected to as irresponsive by counsel for plaintiff.)

Cross-int. 58. State all the conversation.

Ans. I have given the substance as near as I can recollect.

Cross-int. 59. This was yesterday afternoon. Is that your best memory of it?

Ans. It was not all yesterday afternoon.

Cross-int. 60. What part of it was not yesterday afternoon?

(Before answering, at witness's request the preceding questions and answers relating to the subject are read to him.)

952 Ans. The answer to the fifty-third cross-interrogatory was of conversation yesterday afternoon. The rest of the conversation was this morning.

Cross-int. 61. Do you mean to answer that this is the only topic you conversed with Mr. Stetson about since the adjournment yesterday afternoon?

Ans. There was one other point which has just occurred to my mind. It was in regard to a remark made by Mr. Thaxter, that, if I was free to examine their signatures, they would like to show them to me, and that I would be allowed the usual expert's fee. That conversation only occurred to me this morning. I did not think of it yesterday in connection with the conversation in regard to the case which I previously stated.

Cross-int. 62. You told this to Mr. Stetson this morning, did you? What did he say to you about it?

Ans. I did. He said as they had opened the case there was no reason why the counsel for defence should not have the benefit of it.

Cross-int. 63. Did he tell you how the defendants were to get the benefit of it?

Ans. He did not.

Cross-int. 64. Were you told or not by Mr. Stetson or any one, in the conversation yesterday afternoon, when you were asked to think what occurred at Mr. Bartlett's office, that the statement of yours as to the value of expert testimony might impair or affect the value of your own testimony?

Ans. I was not.

Cross-int. 65. After the counsel had asked you to think this over, did it not occur to you that, if that statement were allowed to stand, it would impair the value of your own testimony?

Ans. I felt all the time that my opinion was misunderstood, and not being able to recall any such language as had been used in the question, a wrong inference in regard to my judgment might be found.

(The answer objected to as irresponsive by plaintiff's counsel and—

Cross-int. 66. The same question repeated. Respondents object that it appears the witness has answered it, and as not correctly representing any statements made. To which objection plaintiff's counsel reply that it is wholly irregular for counsel for defendants
953 to state, by way of objection, his judgment whether a question put on cross-interrogation is answered or not; and that the assumption by respondents' counsel that the interrogatory undertakes to represent what the statement is, is wholly gratuitous and unfounded.)

Ans. It did, as not representing the truth that I wished to convey.

Cross-int. 67. Do you mean to say that your answers to the fiftieth and fifty-first cross-interrogatories were not true, and did you think so at the time you gave them yesterday?

Ans. (Upon the examiner inquiring of the witness whether he desires to have those interrogatories and answers read, the witness replies, "I should like to have them." And they are thereupon read to the deponent, who then says:) Those were true according to the best of my recollection at that time, but I could not recall any such

language as was used in the question, and I could not have had any such ideas. Not being able to remember such conversation, I could not be positive exactly what it was; but, if any conversation did occur, I felt that a wrong inference had been made in regard to it, and that any such language would not candidly represent the ideas and opinions I then entertained.

Cross-int. 68. Then you mean to swear, do you, that the ideas contained in your own language, in the answers to said interrogatories, you did not entertain at the time you answered those interrogatories, do you?

(as erroneous assumption, and as being a question liable to misconception from its form.)

Ans. I do not know that that language expressed my ideas; when I referred to the language in my previous answer I meant the language in the interrogatory as representing something different from any ideas that I had.

Cross-int. 69. You are not asked anything about the language of the interrogatories; you are simply asked to state upon your oath whether the ideas in your own language in the answers to those interrogatories were deemed by you to be true or false yesterday afternoon when you gave them.

(Objected to because it appears that the witness has answered the same question in his answer to sixty-seventh cross-interrogatory.)

Ans. I tried to convey the truth, but I found difficulty in using language that would express my true ideas.

Cross-int. 70. Then after your conversation with the counsel after the adjournment last evening, you were led, were you not, to
954 reflect upon the influence of those answers upon your testimony, and that has led to your answer to the sixty-sixth cross-interrogatory, has it not?

Ans. I should naturally have reflected without any conversation with counsel, and nothing has influenced my answer to any question but a desire that the truths, so far as I understand it, shall be stated.

Cross-int. 71. Now, in order to accomplish your desire that the truths may be stated, will you give a direct answer to the last question?

Ans. It has.

Cross-int. 72. After Mr. Thaxter asked you, as you say, to examine his exhibits and promised that you should receive expert's pay, which you swear he did, did he or you settle the question whether or not your services should be secured for the plaintiff?

(Objected to; respondents not objecting to so much as constitutes a question, but object to the preamble thereto as incorrectly assuming to represent facts.)

Ans. I have not sworn that he "promised." I did not use that language. It was settled in my own mind; and on his part I thought the matter was open.

Cross-int. 73. I find that you said that Mr. Thaxter remarked (referring to your answer to the sixty-first cross-interrogatory), that you would be allowed the usual expert's fee; now, in this interview with

Mr. Thaxter, did he in any way press you to become a witness or express any great desire therefor?

(Objected to as involving matters of opinion.)

Ans. He did not; he merely said that if I felt free to do so he should be happy to have me examine their documents, signatures, or photographs; I can't remember the exact words.

Cross-int. 74. Then I understand you that you refused so to do, and for that reason your services were not employed?

Ans. I said that I had expressed an opinion, and did not wish to be called on either side.

Cross-int. 75. Did you refuse to examine the plaintiff's photographs?

(Objected to as it does not yet appear that the witness is aware who the plaintiff is, and the counsel for the plaintiff are requested to modify their question so as to avoid any possible ambiguity on that point, and on the plaintiff's counsel declining so to do, defendants' counsel state that the plaintiff in the case is Miss Robinson and that Mr. Thaxter is of counsel for her.)

Ans. I did not refuse, as I was not asked; he merely said he should be happy to have me examine them, and I did not care to do so.

955 Cross-int. 76. Did you say so?

Ans. I expressed that feeling; I do not recollect the words I used.

Cross-int. 77. Then you did say so, did you?

Ans. That I did not care to do so then.

Cross-int. 78. By "then" you mean at that time, do you not?

Ans. Yes, sir.

Cross-int. 78· Have you understood or heard from any one, and, if so, whom, that you would have an opportunity to alter your testimony either upon the re-direct examination or when your deposition was read to you?

Ans. Not a word has been said to me on the subject.

Cross int. 80. Are you what is called "an ornamental penman?"

Ans. I often have specimens of penmanship brought to me to be executed in ornamental penmanship.

Cross-int. 81. What other occupation, if any, have you besides teaching penmanship?

Ans. Teacher of accountantship, and other branches of study.

Cross-int. 82. You mean the ordinary branches of school instruction, do you not?

Ans. In my institution we teach all branches of an English education—plain and ornamental penmanship, common and higher branches of mathematics, including navigation and surveying, and languages to some extent. The writing department is under my special care and has been for the past ten years.

Cross-int. 83. In speaking of the signature F. W. P., 15, you say, in answer to the eleventh direct interrogatory, that it is not so perfect as No. 10, but when placed on F. W. P., No. 1, it will coincide in parts, by slipping the paper; have you never seen any signatures

that coincided as well as these two, 15 and 1, when you slip them?

Ans. Not where so many letters taken together would coincide.

Cross-int. 84. You say you have made an examination of the papers marked R. C. P., 1 to 51. Did you make any experiments with them to see whether any two of them coincided as well as F. W. P., 15, coincided with F. W. P., 1?

Ans. I do not remember that I did with No. 15, but I did with No. 10.

Cross-int. 85. In your answer to the thirteenth direct interrogatory referring to your examination of F. W. P., No. 10, you
956 say that the last mark from the bottom in A is formed differently in No. 10 and No. 1; "I mean the upward turn to form the loop," you say. Please state whether or not this same manner of forming the loop does not occur in F. W. P., 15, as well as F. W. P., 10, and that they both differ from F. W. P., 1.

Ans. They do; the form of the turn is the same in 10 and 15, and different in No. 1.

Cross-int. 86. Have you examined the papers R. C. P., 1 to 51, and state whether you have examined this same letter A, in those signatures in regard to the loop?

Ans. I did.

Cross-int. 87. Did you find in that examination the method of making the loop referred to in those signatures more resembled the method employed in F. W. P., 1, or in F. W. P., 15?

Ans. A larger number resembled 10 and 15 than 1.

Cross-int. 88. Please point out those which you consider more resemble 1 than they do 10 and 15.

Ans. 20, 5, 51, 50, and 21. There are several so near that I can hardly tell which they are most like; those I have named are the most apparent.

Cross-int. 89. Please examine the down-stroke and the termination of d in the signatures to F. W. P., 1, 10, and 15; and state whether or not the termination in F. W. P., 1, is like that in F. W. P., 10 and 15.

Ans. It is not.

Cross-int. 90. Please examine the papers marked R. C. P., 1 to 51, in relation to the termination of the final d; and state whether they more resemble F. W. P., 10 and 15, or F. W. P., 1, in that respect.

Ans. The termination of the d in these signatures seems to be different from either 1, 10, or 15, F. W. P. They more resemble 10 and 15 in the mark that turns up; but there is a difference, quite a difference, in those terminations—I mean the final ending of the d. The difference between the signatures of the papers 1 to 51, R. C. P., and F. W. P., 10 and 15, I mean.

Cross-int. 91. A difference greater than you find in the terminations to the signatures of the bills of sale (R. C. P., 1 to 51) themselves? Examine carefully.

Ans. There is.

957 Cross-int. 92. As for instance, between R. C. P., 3, and R. C. P., 28?

Ans. Yes, sir.

Cross-int. 93. As between 20 and 36, R. C. P.?

Ans. Yes; a greater.

Cross-int. 94. In your answer to the last two interrogatories, do I understand you to say that there is a greater difference between the final termination of the d in F. W. P., 1, and the same termination in F. W. P., 10 and 15, than there is between R. C. P., 3, and R. C. P., 28, and R. C. P., 20 and 36?

(Objected to because the modes of comparison between unlike objects of different forms cannot justly be described by the words "greater or less difference." Plaintiff objects to this objection, because it is an answer to the question by the counsel and not by the witness.)

Ans. I made no comparison with F. W. P., 1, in my answers.

Cross-int. 95. Will you please make the comparison referred to in the last question, and state the results?

(Objected to as above.)

Ans. There is a greater difference, in my judgment, between F. W. P., 1, and F. W. P., 10 and 15, than there is between R. C. P., 3 and 28, and R. C. P., 20 and 36.

Cross-int. 96. You say that you have examined the book marked R. vs. M.; did you examine the originals from which the photographs therein contained purport to have been taken?

Ans. I do not know as I can identify from my memory; if I could see the book I could tell.

Cross-int. 97. What is your best memory about it?

Ans. I am not quite sure which photographs are in the book referred to.

Cross-int. 98. I mean the book containing the photographs of the signatures of Adams, Walker, Spear, Fairbanks, Swett, Palfrey, and Wilde. Did not Mr. Stetson show you what purported to be the originals of these photographs?

Ans. He did.

Cross-int. 99. Have you or not noticed in your examination of the signature F. W. P., 10, that it is written with a much thicker line throughout than F. W. P., 1?

Ans. I don't quite understand that question.

958 Cross-int. 100. Is not the breadth of the lines which form the letters in the signature F. W. P., 10, generally greater than that which forms the signature of F. W. P., 1?

Ans. Do you mean the strokes with which the letters are formed?

Cross-int. 101. I do.

Ans. They are; they are heavier in 10 than in 1.

Cross-int. 102. In your answer to the twenty-sixth direct interrogatory, you state that you found no signatures in the book marked R. vs. M. which matched as you say F. W. P., 10, matches upon F. W. P., 1. Do you feel as confident about the rest of your testimony as you do about this?

Ans. I am.

Cross-int. 103. Did you examine the signature of J. Q. Adams, 12, over 101, which is in that book?

Ans. I don't remember those numbers. I examined the signatures of J. Q. Adams—two originals with particular care. I think I saw the photographs, but did not examine them so closely as I did the originals.

Cross-int. 104. Do you consider that you can make a more accurate comparison by means of the originals than by photographs of them with transparent riders, or do you prefer that method?

Ans. The discrepancies will show more clearly when enlarged by photographs. If the paper is thick we cannot do so well as by the transparent riders. Both ways of examination would be desirable.

Cross-int. 105. Can you make a more accurate comparison with originals than with enlarged photographs?

Ans. I think not.

Cross-int. 106. Did you examine the signatures of Joseph B. Spear, 45 and 10, in that book?

Ans. I did.

Cross-int. 107. And in all the signatures which you have examined you have found none that cover as well as F. W. P., 15, covers F. W. P., 1, by slipping?

Ans. None which will cover so many letters at a time so well.

Cross-int. 108. Have you made any examination to see how many times it is necessary to slip F. W. P., 15, back and forth to make it match F. W. P., 1?

Ans. I did some time since.

959 Cross-int. 109. Do you recollect the number of times?

Ans. I cannot state exactly, as it is some time since, but I think it was two or three times.

Cross-int. 110. You mean two or three at least?

Ans. I think not more than three; I am not sure it was more than two. In my examination recently, my attention has been more specially directed to an examination of Nos. 1 and 10.

Cross-int. 111. In making your comparisons between F. W. P., 1, 10, and 15, originals, have you had any difficulty in placing the signatures accurately over each other on account of the thickness of the paper?

Ans. I have not.

Cross-int. 112. Have you done so without the aid of a lens?

Ans. I have; both with and without.

Cross-int. 113. You did not find any difficulty then without a lens?

Ans. I did not.

Cross-int. 114. No more than with any of the exhibits that you examined?

Ans. Not quite so plain as with the oiled rider.

Cross-int. 115. I mean the original signatures.

Ans. The paper of the originals F. W. P., 1, 10, and 15, is a little

thicker than some of the others, but I had no difficulty in matching them distinctly so far as the paper is concerned.

Cross-int. 116. Then you consider your results likely to be as accurate in comparing these signatures as in comparing any others?

Ans. I do.

Cross-int. 117. Do you notice in F. W. P., 1, that there is a line of writing behind the word Sylvia, in the signature on the other page?

Ans. There is; not directly behind it.

Cross-int. 118. But it does pass behind it, does it not?

Ans. In part it does.

Cross-int. 119. Now look at No. 10 and state whether or not there is any writing behind that signature in the same way.

Ans. There is but very little behind the word Sylvia; there is more behind the word Ann. There is also in part behind the word Howland.

Cross-int. 120. Look and see if there is not some line or writing, or portion of a line or writing, that is under or touches every letter in the word Howland.

960 Ans. There is writing that appears to touch every letter.

Cross-int. 121. Would not this writing that underlies or touches this signature make it more difficult to trace the signature from F. W. P., 1, through the paper than if it were not there, bearing in mind also the writing that underlies a portion of the signature to F. W. P., 1?

(as assuming the fact that there was any writing under the signature at the time it was made.)

Ans. The more writing underneath, the more difficult it would be to trace accurately through the paper; but this writing seems to interfere but little.

Cross-int. 122. Referring to your last answer, all other circumstances being equal, it would have been easier to have traced F. W. P., 10, or any writing that has any writing behind it, if that writing were not there, would it not?

Ans. It would.

Cross-int. 123. Look at F. W., 15, and F. W. P., 10, and state behind which you find the heaviest and most writing.

Ans. In No. 10.

Cross-int. 124. Have you stated in your direct examination fully the experiments you made with a view to seeing whether the sides of the paper or the printing would match after superposing the signatures marked Wilde, F. W. P., 3 and 4, Spear, F. W. P., 45 and 10, Adams, F. W. P., 58 and 51, Fairbanks, F. W. P., 2365 and 1423, Walker, F. W. P., 679 and 669, Swett, F. W. P., 41 and 12, Palfrey, W. S. D., 246 and 270?

Ans. I do not recollect any others that I made, than those I have mentioned.

Cross-int. 125. In making the comparison of matching these signatures, as you have stated in your direct examination, and then

observing the position of the printed matter, you referred to all the printed matter, did you not?

Ans. I did.

Cross-int. 126. Did you, in the examination of the signatures marked F. W. P., 1, 10 and 15, try the experiment of placing single letters in those signatures over each other as accurately as possible, and then noting the position of the rest of the signatures and the edges of the paper?

961 Ans. I did.

Cross-int. 127. And did you find that in placing all the letters in F. W. P., 10, separately over its corresponding letter in F. W. P., 1, that the rest of the signature was not thrown out from covering, and that the edges of the paper were parallel?

Ans. I did not try every letter of the signature separately, but the larger portion of them. I found that in No. 10 over No. 1, when it was matched as nearly as possible to my vision—the separate letters—the rest of the signature coincided, and the edges of the paper also. Placing No. 15 over No. 1, I found that several of the letters would come in exact superposition, and the rest of the signature would not; but by slipping the paper, other parts would come in superposition.

Cross-int. 128. In that part of your last answer, where you refer to your experiments with F. W. P., 10, over F. W. P., 1, you refer to a general examination of the signature, do you not, and not to the examination of a single selected letter?

Ans. I refer to matching separate letters.

Cross-int. 129. Have you made the experiment of comparing single selected letters from these signatures with the enlarged photographs?

Ans. I have; not to so great an extent as the smaller ones.

Cross-int. 130. And with the same result as to the position of the rest of the signature when two letters were matched as well as they might be?

Ans. The same result so far as I observed.

Cross-int. 131. In placing the signature F. W. P., 10, over F. W. P., 1, in the best position for matching, and placing Spear, 45, F. W. P., in the best position for matching, you are willing to swear, are you, and are as confident about that part of your testimony as about any of the rest of it, that the edges of Spear, 45, F. W. P., and Spear, 10, F. W. P., do not coincide as well as the edges of the paper F. W. P., 1 and 10?

Ans. According to my vision I should judge not quite so perfect. The signature of Spear is the most perfect that I have seen, and I consider it a remarkable case.

Cross-int. 132. Has your vision, upon which you have founded the main part of your testimony, been no more accurate and care-

962 fully applied than in its application in the case you have just stated?

(Objected to as assuming as facts things not proved.)

Ans. I do not know as I fully comprehend the question.

Cross-int. 133. You feel as much confidence, do you not, in the

care which you have bestowed in order to make a correct answer to previous question, and in the accuracy of your vision in that instance, as you do in any other part of your testimony where you have given the results of that vision?

(Objected to for form and substance.)

Ans. In my experiment I placed the top and right margins together, and found that the signatures did not cover or superpose so well as the Howland No. 10 on 1. In that experiment I am confident of accuracy.

(Plaintiff objects to above as irresponsive in the whole answer.)

Cross-int. 134. You are asked whether the edges of the papers F. W. P., Spear 45, and F. W. P., Spear 10, do not coincide as well as the edges of the papers F. W. P., and F. W. P., 10. Will you answer that question?

Ans. Independently of other considerations, they do in part.

Cross-int. 135. I now repeat to you the one hundred and thirty-first cross-interrogatory. Please answer it.

Ans. I am not quite sure; I do not recollect that I made that particular experiment; I did not fully comprehend the question before.

Cross-int. 136. In your direct examination you have stated that under the signatures of Spear, Adams, Fairbanks, Walker, Swett, and Palfrey, you have found a straight line. I suppose you mean the printed or ruled line on which the signature is written, do you not?

Ans. I do.

Cross-int. 137. Now look at the signatures handed you, marked as follows: Adams, F. W. P., 58, 51, 7, 80, 49, 83, 54, 24, 84, 20, 101, 12, and point out a single instance in which the signature is written on a line.

Ans. The signatures are not written on a line, but there is a guide above and below on most of them. There is a line on most of them below and a line of writing or print above the signature.

Cross-int. 138. Then that is what you mean by a line or its equivalent in your direct examination, is it?

Ans. It is.

963 Cross-int. 139. What do you say to the signature J. Q. Adams, 101—I mean the name J. Q. Adams in the middle of the check, rather?

Ans. I should like to have a question that I could understand.

Cross-int. 140. Upon what line or its equivalent is that name written?

Ans. It does not seem to be written on a line, though there is a line below. I should think the line above, of writing and print, was something of a guide; the word Adams seems to be so uniformly under the word dollars.

Cross-int. 141. What has the word dollars to do with the signature referred to in the last interrogatory?

Ans. The word dollars is in the line of writing and print, and is over the word Adams in the signature.

Cross-int. 142. There are two signatures Adams on that check, are

there not? I refer to the upper signature Adams. Now on what line or its equivalent is that signature written?

Ans. My answer before was in reference to the lower one, which I consider the only signature on the check. The upper name has apparently no line on which the "J. Q. Adams" is written. The words "Pay to" at the left and the print above might serve as a guide in writing.

Cross-int. 143. About how far should say the signature last referred to was from the straight, long, printed line underneath it?

Ans. More than inch, I should think.

Cross-int. 144. Now, looking at the other Adams papers referred to, how far are the signatures on them from the long printed line underneath, on an average?

Ans. In any of these computations of spaces I cannot be accurate; I can only give my judgment from this first examination by my eye; I should judge about a half inch.

Cross-int. 145. How do you suppose the Wilde signatures that you have examined were written, at the table or desk or where?

(Objected to as incompetent and not cross-examination on any matter opened by respondents.)

Ans. I have not thought of that, and therefore decline to give any opinion.

Cross-int. 146. Do you suppose they were written with the light passing through them from behind?

(Objected to as above.)

964 Ans. They appear to be natural signatures; I should suppose they were not.

Cross-int. 147. You have said that you have found on the papers on which these Wilde signatures were written "a heavy water-mark which answers the same purpose as a straight line." Please examine the papers marked Wilde F. W. P., 59, 35, 8, 11, 29, 44, 52, 27, 19, 1, 6, 14, 56, 17, and 60, and, placing them upon the table so that the light shall not pass through them, state in each case when the signature is written upon the water-line and when it is not.

Ans. I don't feel prepared to take new documents to investigate, and should decline to do so.

Cross-int. 148. Then I understand you to be unwilling to make the experiment? Are you willing to do it holding them up to the light?

Ans. I decline under these circumstances; where there is anything of great importance to be examined, I prefer to do it leisurely and alone, free from any excitement, to enable me to form a more correct judgment.

Cross-int. 149. Taking all the time you please, and doing the work as leisurely as you desire, you are unwilling to do it, are you, unless alone?

(Objected to because it is apparent, at this stage of the cause and under the agreement for closing the testimony, that there is no opportunity for examination by the witness in such way and in such time as to have his testimony taken. To which the plaintiff replies, that

the examination being simply one of inspection, that no time of any great length will be required. as appears from the question itself.)

Ans. I only ask my legal rights as a witness in this matter; I am willing to do anything that the law requires in regard to these papers.

Cross-int. 150. Supposing your legal rights to be preserved, are you willing to make the examination as suggested?

Ans. I am; I have no objection to it; I am willing to do anything consistent with my legal rights. I have never examined any papers with the name of Wilde but two.

Adjourned to Friday, May 17th, at 9½ a. m.

965 FRIDAY, *May 17th.*

Cross-int. 151. What do you mean by your legal rights, as stated in your last answer?

Ans. That if I have the legal right to take time sufficient to form an accurate opinion, and to do it under different circumstances, alone, and free from excitement, I should desire to avail myself of it; and, if it is legally necessary for me to make the examination, I should be willing to do what the law requires under the circumstances, or in similar cases.

Cross-int. 152. And yet when, by the one hundred and forty-ninth cross-interrogatory, it was proposed to you to take all the time you pleased, and to work as leisurely as you desired, your answer was, "I am willing to do anything that the law requires in regard to these papers." If so, why did you not proceed to answer the question?

(as immaterial and assuming a fact not in evidence.)

Ans. I wish to fully understand that question before answering.

(At the request of the respondents' counsel, and upon inquiring of the witness whether he so desired, and the witness replying that he did so desire, the examiner proposes to instruct the witness in regard to his legal rights and duties in the premises upon any matter pertinent thereto requested by the witness.

Counsel for plaintiff object that the question calls for no instructions as to the duty of the witness, but simply contrasts the refusal of the witness to answer, under the circumstances stated in the interrogatory with his statement in the answer to previous interrogatory of the grounds upon which he refused to answer that interrogatory, and asks him to explain it.

Respondents' counsel suggests in reply to the objection that the objection, as they understand it, assumes a fact not proved, to wit, that there has been any refusal on the part of the witness to make the examination requested, respondents understanding the result of the previous interrogatories and answers to be, that the witness was ready to make the examination, if reasonable opportunity were afforded him to do it carefully, and the examiner were of the opinion that his legal duty required him so to do; and, in this posture of the

966 facts, counsel for respondents respectfully request the examiner, not assuming themselves to advise or direct the witness, to instruct the witness what is his legal duties in the premises.

The witness thereupon says that he wishes to be instructed in regard to the requirements of the law in regard to his examination of the new papers referred to in his previous answers.

To which the examiner replies and instructs the witness that such advice and instruction is not now necessary or pertinent, because the interrogatory now pending does not call for such examination, but is an inquiry simply as to the reasons or motives of the witness in declining at the present time to make such examination, and the examiner declines to instruct the witness upon any abstract proposition.

The respondents here interpose as an objection that the previous answer of the witness was a call for instructions as to his legal duties, and was not a refusal to answer.

Plaintiff's counsel object to such an interposition as calculated to lead the witness to an answer in favor of the party making the objection.)

Ans. When I first declined to examine the papers, I was embarrassed for want of sufficient knowledge of what my legal rights were, and it did not occur to me that I could call on the magistrate for such instruction as I desired in the matter. If I had thought of it then, I should have asked for such instruction, and should have been willing to do what he directed.

Cross-int. 153. Is that the best answer you can make to the interrogatory last put to you?

Ans. I do not know that I can make it better; I want to be perfectly understood, and I have tried to express it clearly.

Cross-int. 154. By the one hundred and forty-ninth cross-interrogatory you are offered time and leisure to examine the papers submitted to you, and yet you declined to do so, did you not?

(Objected to as assuming a fact not in evidence, to wit, that the witness declined to examine the papers, the contrary whereof appearing on the record, the witness having made no refusal to make the examination.

Plaintiff's counsel suggests to the examiner that no rights of cross-examination can be preserved if such an objection can be orally made in presence of the witness to guide him to an answer.

967 Respondents' counsel replies that no right of examination includes the assumption of facts not on the record and that the counsel for respondents claim and insist on the right to interpose when such an assumption is made, and to request the examiner to note the objection, and asks the examiner to note a reference to witness's answer to the one hundred and fiftieth cross-interrogatory, as fully showing the propriety of such interposition.

The examiner here notes that he has heretofore proposed, at the desire of either party, to require objections to interrogatories to be reduced to writing and not dictated in the hearing of witnesses, but no such request having been made, and no ruling asked by either party, he now proceeds to put the pending question.)

Ans. I did not understand that I could have the time and freedom from excitement that I had expressed a desire to have in the answer to a previous interrogatory (I think.)

Cross-int. 155. What did you understand by these words in that interrogatory: "Taking all the time you please and doing the work as leisurely as you desire?" Were they unintelligible to you?

Ans. I understood the question to be if I was allowed the time and leisure whether I would not unless I was alone.

Cross-int. 156. And you declined to do it as desired, did you not?

(The counsel for respondents object to the above as assuming fact not proved.

And here the counsel for plaintiff asking the magistrate to rule that all objections made to questions shall be reduced to writing and handed to the examiner for record without reading to the witness; the examiner thereupon rules that all objections shall be so taken or taken and dictated in the absence of the witness, and not otherwise.

Plaintiff's counsel states that he has moved this ruling by reason of the fact that many of the oral objections of the counsel to the interrogatories, and in this instance among others, tend to instruct the witness how to answer.

Respondents' counsel reply that the objections made orally by counsel for respondents, having been reduced to writing by the magistrate ipsissimis verbis, furnish a complete and perfect answer to the suggestions of the plaintiff as to the reason why this ruling is made.)

Ans. I did not.

968 Cross-int. 157. Did you do it?

Ans. I did not.

Cross-int. 158. And not having done it, you mean to state, do you, that your answer was not in substance a refusal to do it in the manner requested?

Ans. I was embarrassed, not knowing the legal rights that I had, but supposed that I had the right to examine those papers at my leisure, free from excitement and alone, and should have done so had I been instructed by the magistrate that it was my legal duty, and should have asked him to instruct me in the matter if it had occurred to me that I could call upon him.

Cross-int. 159. Do you consider your last answer an answer to the question? Please have it read again to you, and state whether in your answer to the one hundred and forty-ninth cross-interrogatory you mean to be understood that you declined to make the examination requested in the manner proposed or not.

(Counsel for respondents request the examiner to explain the question to the witness.)

Ans. I do consider it an answer. I did not intend to decline it, if I had had instruction that it was my duty to make such examination.

Cross-int. 160. But unless so instructed you meant by your answer to decline doing so, did you not?

Ans. I did.

Cross-int. 161. You have stated, did you not, in answer to the fifty-fourth direct interrogatory, that under the signatures of Spear, Adams, Fairbanks, Walker, Swett, and Palfrey you find a straight

line which is a guide to the hand in writing, and that the signature of Wilde is upon paper which has a heavy water-mark, which answers the same purpose? How many of Wilde's signatures have you examined?

(The counsel for respondents here interposing an oral objection to the above interrogatory, and the counsel for plaintiffs asking for the enforcement of the rule above made by the examiner, the counsel for respondents ask that the interrogatories may be reduced to writing, and handed to the examiner. To which the counsel for plaintiff not objecting, the examiner so directs.

The respondents record the following objection to the above interrogatory:

"The counsel to the respondents object to the putting the 969 question to the witness or to any answer being required until the papers referred to are produced for the examination of the witness. And the counsel for the respondents respectfully request the magistrate to instruct the witness that he is not bound to answer the question until the exhibits are produced for the inspection of the witness.

And thereupon the counsel for plaintiffs furnishes to the witness the papers marked Wilde, F. W. P., 3, 17, 60, 35, 56, 14, 6, 19, 27, 52, 44, 29, 11, 8, 59, 4.)

Ans. Two; Nos. 4 and 3.

Cross-int. 162. Will you now place upon the table paper marked Wilde, F. W. P., 1, in the manner in which you would place it if you or any one was about to sign it, and say whether it has a heavy water-mark or any water-mark visible to you?

(Counsel for respondents object to the question as in the nature of cross-examination upon papers upon which witness has not been examined by counsel for respondents, and request the magistrate to instruct the witness that such examination of others cannot be required of him as a legal duty, though he is at liberty to do so if he desires.

The examiner there upon rules that the witness is not bound to make the examination required, but it is proper for him to do so if he consents.)

Ans. I respectfully decline to do so.

Cross-int. 163. Will you now take the sixteen papers marked F. W. P., Wilde, numbered and described by the examiner (except Nos. 3 and 4) at the foot of interrogatory one hundred and sixty-one, and make the same examination requested in this last interrogatory?

(Counsel for plaintiff ask the examiner to revise his ruling.

The counsel for plaintiff declining upon call of the examiner to argue the question, and suggesting no facts or circumstances calling for such revision, the examiner declines to reverse the rule made.

Counsel for respondents object to interrogatory as last above, and as being examination in chief, and also as irregular and in violation of the ruling made by the examiner and upon which the witness acted; the papers referred to in the question being also papers which the witness had not examined.)

Ans. I respectfully decline to do so unless instructed by the mag-

istrate that it is my duty to do so, and I ask him to instruct me on that point.

(And thereupon the examiner does not instruct the witness that it is his duty so to do.

970 And the plaintiff's counsel then desires record of the following :

And now the counsel for plaintiff protesting that the ruling of the examiner deprives him of his legal rights in cross-examination, and renders it impossible for him to proceed therein, gives notice that he shall object to the use of this deposition at the trial, and declines to proceed further in the cross-examination of the witness.

And now the testimony being read over to the witness, he now desires to make the following explanations and additions:

In the answer to eighty-seventh cross-interrogatory I meant to be understood as confining my answer to the upward turn from the bottom of the A; in the rest of that loop the formation is more nearly like the A in No. 1. The formation of the loops in A in No. 10 and 15 is more nearly like the formation of the loop in No. 1, (all F. W.P.,) than in the formation of the loops in the A in the Howland signatures to the bills of sale, being nearer the bottom of the letters in those signatures than in the signatures to the bills of sale.

In the answer to the ninetieth cross-interrogatory I would add, they are unlike 10 and 15 in ending with a downward curve, whereas in 10 and 15 the termination of the d is more angular and more nearly horizontal.

In the answer to the one hundred and thirty-first cross-interrogatory I would add that in the enlarged photograph of said Spear signature, on superposing the signatures, the letters of the under signature distinctly show.

In the answer to the one hundred and thirty-eighth cross-interrogatory I would add, not wholly. I included also the water-mark in the paper on which the Wilde signatures were written.)

GEO. A. SAWYER.

971 SATURDAY, *May* 18, 1867.

Deposition of Elizabeth Penney.

I, Elizabeth Penney, of Boston, in the county of Suffolk, aged thirty-seven years, on oath say:

I am employed in the photographic establishment of J. A. Whipple, 297 Washington street. I have been so employed since October, 1862; though his establishment has not been in the same place all of that time.

(And being examined on interrogatories propounded in writing by T. M. Stetson, esq., of counsel for respondents, witness testifies as follows:)

Int. 1. State whether you know Alice Cornelia Driscoll by sight, and whether or not you remember her coming to Mr. Whipple's pho-

tograph rooms with another lady at any time in the fall of 1866; and, if so, when, as near as you can remember.

Ans. I have seen a lady called Mrs. Driscoll. I do remember her coming with another lady. It was in August, 1866, I think; I am quite sure it was then.

Int. 2. Please to state all that occurred while the two ladies were there.

Ans. At the time the ladies were there I was getting an order ready for some pictures or copy of the Howland will. They were mounted in the side room next to the reception room. I took them into the latter room to dry them in the sun for delivery. These ladies came along and looked at them; after they were dried a little I passed them to a finisher who sat in the room, to touch up some little imperfections which were in the background; some white spots which were imperfections in the paper. The ladies came again and looked over the finisher's shoulder to see what she was doing. Mrs. Driscoll made some remark to the other lady which I did not overhear. About that time Mr. Southworth came in and very angrily demanded to know why I was exposing those pictures to the public, and said they were private and should not have been out in the reception room exposed to view. I told him I did not know they were private,
972 but was preparing them for delivery as usual. He said I ought to have known that they were private. He had them all taken up and taken away from there. I saw him soon after talking to the ladies, but did not hear what he said. That is all to that question.

Int. 3. Please explain what you mean by background.

Ans. What we should call a background in a picture would be what I suppose you would call a blank place on the paper. I mean the spaces between the letters or the writing would be the background.

Int. 4. What was the material the finisher was using?

Ans. India ink.

Int. 5. Whether any one, and, if so, who, pointed out the spot or spots to be retouched to the finisher?

Ans. No one but myself.

Int. 6. State whether the spot or spots retouched were or were not in the signatures?

(Objected to as leading.)

Ans. They were not in the signature itself.

Int. 7. State whether or not you had had directions from any one concerning this; if so, state what.

(Objected to as leading.)

Ans. I had none whatever.

Int. 8. Did you or not at any time have any directions from Mr. Southworth concerning the lot of photographs of the Howland signatures ordered by him; and, if so, was it before or after the interview with the said ladies?

(Objected to as leading and seeking to introduce impertinent testimony.)

Ans. I had never seen Mr. Southworth until that day. In October

after, I had an order from him for a large number of copies of the will. I had no directions except to keep them in my room and not to let them go out except upon his order.

Int. 9. State whether or not any of the photographs of the Howland will or signatures that were delivered to Mr. Southworth had or not been made at the time of the interview with the two ladies as above.

(Objected to as above.)

Ans. They had not.

Int. 10. State whether or not Mr. Southworth gave you instructions concerning his lot of photographs of the Howland will and signatures as to spotting or not spotting them; and, if so, what.

(Objected to as leading.)

Ans. He gave me no directions for spotting.

973 Int. 11. If a photograph has been touched with India ink how difficult is it to remove such ink, and how can it be done?

Ans. If a photograph on albumen paper has been touched with India ink, it comes off readily by the application of a wet sponge.

Int. 12. State whether these photographs that said ladies saw of the Howland will and signatures were or were not upon albumen paper.

Ans. They were.

Int. 13. State whether or not you saw that document—F. W. P., No. 1—now before you, being photographed about ten days ago.

Ans. I did.

Int. 14. State whether the paper now before you, marked R. C. P., Photograph 8, is the photograph then made from said paper F. W. P., No. 1.

Ans. It is.

Int. 15. How was it made in reference to the position of the rays of the sun?

Ans. The paper was placed in such a position that the rays of the sun shone through it.

The exhibit is here formally put in the case.

Cross-examination:

(The witness being cross-examined by S. Bartlett, esq., of counsel for complainant, testifies as follows.)

Cross-int. 1. I understand you that the photographs you handed to the finisher were photographs of the body of the Howland will with the signature, were they not?

Ans. They were.

Cross-int. 2. How many of them did you hand to the finisher?

Ans. I am not sure that I remember, but I think four of each.

Cross-int. 3. They were upon different scales or were of different sizes, were they not?

Ans. They were.

Cross-int. 4. Were the photographs given to the finisher the day before or on that day?

line which is a guide to the hand in writing, and that the signature of Wilde is upon paper which has a heavy water-mark, which answers the same purpose? How many of Wilde's signatures have you examined?

(The counsel for respondents here interposing an oral objection to the above interrogatory, and the counsel for plaintiffs asking for the enforcement of the rule above made by the examiner, the counsel for respondents ask that the interrogatories may be reduced to writing, and handed to the examiner. To which the counsel for plaintiff not objecting, the examiner so directs.

The respondents record the following objection to the above interrogatory:

"The counsel to the respondents object to the putting the
969 question to the witness or to any answer being required until the papers referred to are produced for the examination of the witness. And the counsel for the respondents respectfully request the magistrate to instruct the witness that he is not bound to answer the question until the exhibits are produced for the inspection of the witness.

And thereupon the counsel for plaintiffs furnishes to the witness the papers marked Wilde, F. W. P., 3, 17, 60, 35, 56, 14, 6, 19, 27, 52, 44, 29, 11, 8, 59, 4.)

Ans. Two; Nos. 4 and 3.

Cross-int. 162. Will you now place upon the table paper marked Wilde, F. W. P., 1, in the manner in which you would place it if you or any one was about to sign it, and say whether it has a heavy water-mark or any water-mark visible to you?

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Deposition of Elizabeth Penney.

I, Elizabeth Penney, of Boston, in the county of Suffolk, aged thirty-seven years, on oath say:

I am employed in the photographic establishment of J. A. Whipple, 297 Washington street. I have been so employed since October, 1862; though his establishment has not been in the same place all of that time.

(And being examined on interrogatories propounded in writing by T. M. Stetson, esq., of counsel for respondents, witness testifies as follows:)

Int. 1. State whether you know Alice Cornelia Driscoll by sight, and whether or not you remember her coming to Mr. Whipple's pho-

tograph rooms with another lady at any time in the fall of 1866; and, if so, when, as near as you can remember.

Ans. I have seen a lady called Mrs. Driscoll. I do remember her coming with another lady. It was in August, 1866, I think; I am quite sure it was then.

Int. 2. Please to state all that occurred while the two ladies were there.

Ans. At the time the ladies were there I was getting an order ready for some pictures or copy of the Howland will. They were mounted in the side room next to the reception room. I took them into the latter room to dry them in the sun for delivery. These ladies came along and looked at them; after they were dried a little I passed them to a finisher who sat in the room, to touch up some little imperfections which were in the background; some white spots which were imperfections in the paper. The ladies came again and looked over the finisher's shoulder to see what she was doing. Mrs. Driscoll made some remark to the other lady which I did not overhear. About that time Mr. Southworth came in and very angrily demanded to know why I was exposing those pictures to the public, and said they were private and should not have been out in the reception room exposed to view. I told him I did not know they were private,
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Int. 3. Please explain what you mean by background.

Ans. What we should call a background in a picture would be what I suppose you would call a blank place on the paper. I mean the spaces between the letters or the writing would be the background.

Int. 4. What was the material the finisher was using?

Ans. India ink.

Int. 5. Whether any one, and, if so, who, pointed out the spot or spots to be retouched to the finisher?

Ans. No one but myself.

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(Objected to as leading.)

Ans. They were not in the signature itself.

Int. 7. State whether or not you had had directions from any one concerning this; if so, state what.

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Ans. I had none whatever.

Int. 8. Did you or not at any time have any directions from Mr. Southworth concerning the lot of photographs of the Howland signatures ordered by him; and, if so, was it before or after the interview with the said ladies?

(Objected to as leading and seeking to introduce impertinent testimony.)

Ans. I had never seen Mr. Southworth until that day. In October

after, I had an order from him for a large number of copies of the will. I had no directions except to keep them in my room and not to let them go out except upon his order.

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Ans. If a photograph on albumen paper has been touched with India ink, it comes off readily by the application of a wet sponge.

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Ans. They were.

Int. 13. State whether or not you saw that document—F. W. P., No. 1—now before you, being photographed about ten days ago.

Ans. I did.

Int. 14. State whether the paper now before you, marked R. C. P., Photograph 8, is the photograph then made from said paper F. W. P., No. 1.

Ans. It is.

Int. 15. How was it made in reference to the position of the rays of the sun?

Ans. The paper was placed in such a position that the rays of the sun shone through it.

The exhibit is here formally put in the case.

Cross-examination:

(The witness being cross-examined by S. Bartlett, esq., of counsel for complainant, testifies as follows.)

Cross-int. 1. I understand you that the photographs you handed to the finisher were photographs of the body of the Howland will with the signature, were they not?

Ans. They were.

Cross-int. 2. How many of them did you hand to the finisher?

Ans. I am not sure that I remember, but I think four of each.

Cross-int. 3. They were upon different scales or were of different sizes, were they not?

Ans. They were.

Cross-int. 4. Were the photographs given to the finisher the day before or on that day?

Ans. On the day of the interview with the ladies.

974 Cross-int. 5. How many finishers did you employ at Mr. Whipple's?

Ans. At that time there were three ladies. That was all the plain finishers we had. I did not suppose the question called for how many artists we had.

Cross-int. 6. They are usually employed on photographic portraits, are they not?

Ans. They are usually employed on all sorts of plain photographs.

Cross-int. 7. Retouching them and covering the blemishes and making them more complete with India ink according to their eye, is it not?

Ans. It is.

Cross-int. 8. You usually hand them the photographs, do you not, and they know what to do without any directions from you?

Ans. I do not always. I prepare them for that purpose. Sometimes some one else gives the directions; sometimes I give it.

Cross-int. 9. They have skill enough, have they not, to complete the work without directions?

(Objected to as immaterial.)

Ans. Yes.

Cross-int. 10. Do you mean to say, upon your oath, that you recollect at this distance of time, whether you did or did not give any directions in regard to these particular photographs?

Ans. I do remember.

Cross-int. 11. What leads you to remember in this particular instance?

Ans. I remember from the fact of Mr. Southworth's speaking in the manner he did.

Cross-int. 12. Is that all that you remember about these particular photographs?

Ans. I don't know as I understand the question fully. (Counsel for respondents object to the interrogatory from the ambiguity of the word "that," and its tending to mislead a witness and a reader of the deposition.) No; it is not all that I remember.

Cross-int. 13. How does Mr. Southworth's speaking in the manner he did, as you say, enable you to recollect whether you did or did not at a previous part of the day give any particular directions to the finishers about these particular photographs?

Ans. It was not the previous part of the day.

Cross-int. 14. Then your directions were given after Mr. Southworth spoke as he did, were they?

975 Ans. They were not.

Cross-int. 15. If they were not, how could they have been given otherwise than in a previous part of the day?

Ans. I wish to be understood that Mr. Southworth came in as I stood near the finisher after I had just handed the work to her; some of it I was then drying in the sun, and some of it the finisher then held in her hands and was at work on.

Cross-int. 16. How does that enable you to tell whether you gave

any and what directions to the finisher? Mr. Southworth did not say anything about any directions to the finisher, did he?

Ans. Mr. Southworth said he wanted the photographs only mounted, not touched.

Cross-int. 17. He said that at this time, did he?

Ans. He did.

Cross-int. 18. How came he to say so? Had you told him what directions you had given to the finishers?

Ans. He came in and saw the photographs lying about, and angrily demanded to know why they were there. I gave as a reason that I was drying them to have them finished as usual. He replied that they were only to be mounted, and not finished; spotted, I might say, for that is the term.

Cross-int. 19. You feel sure, do you not, that these were the only photographs either of the will or the signature of Sylvia Ann Howland which had been made at this time?

Ans. Except the first proofs, they were, to the best of my knowledge.

Cross-int. 20. You mean the first proofs from the same negatives, do you not?

Ans. I do.

Cross-int. 21. Now you feel as confident of this, do you not, as upon the question whether you gave instructions to the finisher?

Ans. I am sure in regard to the instructions I gave the finisher; but the other I cannot distinctly remember, as a picture might have gone out without my knowledge, although I don't think it did.

Cross-int. 22. If any photographs had been made of the signatures of Sylvia Ann Howland before this time, they would naturally, if not necessarily, come into your hands, would they not, and have been by you afterwards put into the hands of the finisher, would they not?

976 Ans. If I had been in the building at the time, they probably would. I might have been out at noon, and I can't say what might have happened when I was out.

Cross-int. 23. If such signatures had been photographed while you were out, who would, in the course of business, have put them into the hands of the finisher?

Ans. Probably been sent to the reception room by the girl who assists me, to those who deliver the pictures.

Cross-int. 24. Does that answer the question? Please have the question re-read to you and answer it.

Ans. Either Miss Stephens or Miss Hadlock, probably.

Cross-int. 25. Are those persons now in the employment of Mr. Whipple?

Ans. Miss Stephens is; Miss Hadlock is not.

Cross-int. 26. Do you not know that prior to the time of the visit of the ladies to Mr. Whipple's rooms, that you have referred to, photographs of three signatures of Sylvia Ann Howland had been made by Mr. Whipple—the signatures being placed one over the other, and then pasted upon a card and put among the photographs

of the American Baptist Missionary Society in the exhibition room of Mr. Whipple?

Ans. I do not know that it was done, unless, possibly, a proof might have got there.

Cross-int. 27. A proof of what? Had you previously to that time seen any such photograph?

Ans. There were proofs of each of those that were taken, made and mounted. The ones that I refer to were copies of the will and signatures; that was all that had been copied at that time—that I know of as copied at that time.

Cross-int. 28. Then you had not, previously to that time, seen a photograph containing nothing but three signatures of Sylvia Ann Howland, placed one over the other, and mounted or pasted on cards, had you?

Ans. I had not.

Cross-int. 29. Then, if any such photographs had been made, or other photographs of the mere signatures of Sylvia Ann Howland placed the one over the other, you knew nothing about it, did you—not of who handed them to the finisher?

Ans. I did not.

977 Cross-int. 30. Of course you know nothing by whom such photographs were placed, if they were so, among the photographs of the American Baptist Missionary Society, do you?

(Objected to as assuming that it is clear that such photographs were so placed.)

Ans. I do not. I wish to add in regard to those that I referred to as copied at that time, that I supposed they were the signatures of the three witnesses to the will when I gave my answer to a former cross-interrogatory. When I said the proof might have got out, I meant the proof of those and the regular signature to the will, Sylvia Ann Howland, and not of a photograph containing nothing but the three signatures.

Cross-int. 31. That there may be no misunderstanding I will repeat the question, whether or not, prior to the interview with the two ladies to which you refer, had a photograph been made by Mr. Whipple, to your knowledge, containing nothing but three signatures of Sylvia Ann Howland placed one over the other, mounted or pasted on a card, and placed by accident or otherwise among the photographs of the American Baptist Missionary Society?

Ans. Not that I know of.

Cross-int. 32. Then, if such photographs had been made, you do not of course know, do you, whether Mr. Southworth did or did not request or direct, as in the interview you have referred to, that such photographs should be only mounted and not touched?

Ans. I am very sure such a negative had not been made.

Cross-int. 33. Then of course you do not know what Mr. Southworth's instructions were as to mounting or touching the same, if such negative was made?

(Counsel for respondents object to the question as irregular and misleading in its assumptions.)

Ans. If such negative had been made I should probably have had some instruction in regard to the mounting.

Cross-int. 34. And you remember none, do you?

Ans. I do not, if I understand the question rightly.

Cross-int. 35. Until Mr. Southworth's remarks as to the particular photographs at the time of the interview, so far as you remember, you followed the usual course, did you not?

Ans. I did.

978 Cross-int. 36. What sort of paper are the photographs in R. C. P., Book 1, Volumes 1 and 2, printed on?

Ans. Albumen paper. In Volume 2, Plates 1 and 2 are plain; also 3½; Plate 4 is albumen; 4½ albumen, with plain rider; 5 is the same; 5½ is albumen; 6, 7, 8, and 9 are all albumen; 10 albumen, with plain riders; 11 and 12 albumen; 13, the unoiled sheet, is albumen; the rider appears to be albumen paper oiled. In 14, 15, 16, 17, and 18 the attached photographs are albumen, and the loose riders are albumen paper oiled. Volume 1 has all the plates on albumen paper up to and including Plate 9. Plate 10 is albumen, with plain oiled rider; Plate 11 is the same; 12 and 13 are albumen; 14 is albumen, and the riders are albumen oiled; 15, 16, 17, and 18 are all albumen.

Cross-int. 37. You say that you saw the photograph made of F. W. P., 1, which has been shown you, marked R. C. P., Photograph 8. Please hold the original F. W. P., No. 1, up to the light, and say whether it presents the same appearance now that it did when you saw the photograph of it made.

Ans. It does.

Re-direct:

(The witness being re-examined by counsel for respondents, testifies thus:)

Int. 16. What is the irregular black blotch on the photograph R. C. P., Photograph 8?

Ans. It is caused by a piece of adhesive paper placed over the glass by myself.

Int. 17. State whether the lot of photographs made up to the time of this interview between said ladies, yourself, and Mr. Southworth went to New Bedford or to Mr. Southworth.

(Objected to as leading.)

Ans. I understood all the photographs were to be sent to New Bedford, but I did not send them myself, and so of course I cannot tell.

Int. 18. All of which lot?

Ans. All of those which were copied up to that time.

Int. 19. What is the name of your room or department at Mr. Whipple's?

Ans. It is called the work and mounting room.

979 Int. 20. Whether or not all the photographs made at this establishment pass through this room and your inspection, or not?

(Objected to as leading.)

Ans. They do.

Int. 26. During the autumn of 1866 how much of the time were you at Mr. Whipple's on duty, and how much of the time absent?

Ans. From the last week in September I was there constantly, except for about two weeks, the last in September and the first of October, (I think,) when I went out at noon: since that I have been there all the time, as near as I can remember; that is, it there may have been a day or two when I have been absent at noon, but I do not remember.

Int. 22. Please to examine the Volumes 1 and 2, R. C. P., Book 1, and say whether or not any of the photographs of the three signatures without any writing are included therein.

Ans. They are not; there are none but that have writing at the bottom—something like published—a small writing.

Int. 23. You can mount a photograph, can you not?

Ans. I can.

Int. 24. State whether the mounted photograph, marked R. C. P., Photograph 9, is or is not a duplicate of the one already spoken of by you in your fourteenth answer.

Ans. It is.

Cross-examination resumed:

(The cross-examination being resumed, witness testifies as follows:)

Cross-int. 38. In your answer to the sixteenth interrogatory you state that the irregular black blotch on the photograph marked R. C. P., Photograph 8, is caused by a piece of paper placed over the glass by yourself. What glass?

Ans. The original was placed between two glasses to hold it, the piece of paper was pasted on the outside of the glass, the glass over the writing copied.

Cross-int. 38. Do you mean upon the glass placed in front of the signature?

Ans. I do.

980 Cross-int. 40. Now state fully, if you please, for what purpose this was done.

Ans. In order that I could identify the negative as being the one copied at that time.

Cross-int. 41. For what purpose did you wish it identified?

Ans. For no particular purpose except that there were others copied, and this was the last one copied.

Cross-int. 42. Why did you want to identify the last copy made?

Ans. I was requested to do so by Mr. Southworth.

Cross-int. 43. What reason did he give for it?

Ans. No reason whatever.

Cross-int. 44. Then you did not understand for what purpose that could be, did you; and do not know or have any idea now, have you?

Ans. I did understand afterward that it might be used for some such purpose as this, but I did not at the time that I fixed it.

Cross-int. 45. What do you now understand to be the purpose?

Ans. So that I could identify it as the negative made there.

Cross-int. 46. What do you now understand to be the purpose of that identification; will you answer directly?

Ans. I don't understand the question as I know.

Cross-int. 47. You say, "I did understand afterward that it might be used for some such purpose as this." What purpose did you understand these photographs might be used for?

Ans. Perhaps I did not answer correctly. I should have said that I might be called on to testify about it.

Cross-int. 48. Then you do not now understand nor have any knowledge of the purposes for which these photographs, thus identified by you, are intended to be used, do you?

Ans. I do not.

Cross-int. 49. And you mean to say upon your oath that you have never been informed or told anything upon the subject, do you?

Ans. I do.

ELIZABETH PENNEY.

981 MONDAY, *May* 20, 1867.

Deposition of Charles T. Jackson.

I, Charles T. Jackson, of Boston, in the county of Suffolk, aged sixty-one years, on oath say, in answer to interrogatories propounded by counsel for respondents, as follows:

Int. 1. Please to state your occupation and pursuits, and any official station you may hold.

Ans. I am a doctor of medicine, analytic and consulting chemist and geologist, and State assayer to the commonwealth of Massachusetts; I am 1st vice-president of the Boston Society of Natural History, and belong to various scientific and medical societies of Europe and this country. I am a fellow of the American Academy of Arts and Sciences.

Int. 2. Will you be kind enough to name some of the European associations of which you are a member?

Ans. Of the Geological Society of France; the Imperial Geological Institute of Vienna; the Academy of Sciences of Stanislaus, France; of the Paleontological Society of Antwerp; of the Medical Society of Athens, Greece; Medical Society of Strasburg; Medical Society of Nancy, France; the Natural History Society of Montreal, Canada; and of the Natural History Society of Quebec; also member of the Imperial Mineralogical Society of St. Petersburg; the Imperial Academy of Sciences of Moscow, and some smaller societies.

Int. 3. Please to state your experience in the use of the microscope.

Ans. I have always been in the habit of using it since I was a student of medicine in 1825, and have had frequent occasion to employ it in my researches. I have used both the simple and compound microscope.

Int. 4. Please to state whether you have had or not occasion to study the subject of inks and their modes of action and their properties; and, if so, please to state to what extent and in what ways.

Ans. I have made a special study of the nature and composition of inks, and am frequently called upon to advise respecting their manufacture. I have fully studied their properties with regard to permanency and colors.

982 Int. 5. State whether or not you have manufactured inks, or experimented as to their effects, or have made communications concerning inks to any scientific societies; if so, state fully.

(Objected to as leading.)

Ans. I have made various kinds of inks in my experimental researches and for my own use. I have made scientific communications respecting the qualities and compositions of inks to the American Academy, Boston Society of Natural History, and to the Thursday Evening Club.

Int. 6. Please state whether or not you have been consulted in cases of disputed, removed, or lost signatures, transfers, and restorations of writing; and, if so, say to what extent, and state such facts relative thereto as you can.

Ans. I have been occasionally consulted concerning alleged altered writing, removed writing, and alleged forgeries, and accidental removal of writing. In cases where signatures had been removed by chemical reagents; in cases where by age ink had faded out; in case where papers buried in a dung heap had the writing obliterated, I have been consulted where the object was to restore the original writing if possible. I can also state that in most cases I have succeeded in restoring the writing, or showing that it was once there.

Int. 7. State whether or not you were consulted in the case of Commonwealth vs. George Miller, a case of alleged forgery by tracing.

Ans. I was.

Int. 8. Did you or not have any experience in regard to the muster-roll of Bunker Hill? If so, state briefly.

Ans. The secretary of the commonwealth placed in my hands one of the muster-rolls of the troops who marched to Bunker Hill, on which the names were so faded as to be illegible. I restored all the names except that of one major, whose name I could bring out, only his title.

Int. 9. State whether or not you have examined the paper before you marked F. W. P., 10; and, if so, to what extent and with what facilities, in reference to the inquiry whether said signature has been overwritten or not.

(Objected to on the ground that in the state of the pleadings in this case the question is not open to respondents; also, that it does not appear that the witness is an expert in relation to the matters inquired of, and because it is not in rebuttal to the plaintiff's

983 evidence, but merely cumulative testimony upon that part of the case where respondents have closed, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse and without waiving these objections.)

Ans. I have examined this paper with care. I have spent several

hours over it examining the signature with microscopes of various powers, for the purpose of discovering whether the signature had been written over or not.

Int. 10. Please to state fully and with detail the results of such examination.

(Objected to as above.)

Ans. I found the signature Sylvia Ann Howland to consist of two inkings—a signature written in pale ink being covered with a very thick and black and gummy ink. This heavier ink may have been the same ink dried down so as to make it contain more coloring matter and gum, or it may have been from a separate lot of ink. On the first letter S in Sylvia, on the left side, and at the top of the letter, the paler ink is seen beyond the black, and the letter a in Sylvia shows two strokes of pale ink beyond the black covering; also the top of the last stroke in the same letter shows this pale ink protruding beyond. In the name Ann the top of the A is double, consisting of two strokes; the last down-stroke in the last n in Ann shows the pale ink beyond the black covering. In the name Howland, both tops of the letter H and the a top and bottom curve in after connection show the light ink beyond the dark. I should also have added in my remarks on Sylvia that the bottom of the letter i shows the pale ink. This heavy, thick ink has the shining lustre due to a considerable proportion of gum-arabic, and was very thick or muddy ink. That was all I discovered there with the microscope.

Int. 11. State whether or not you observed any difference in coloring between the two inks—the question not referring to mere shading.

(Objected to as leading and as above. Question withdrawn.)

Int. 12. In regard to the top of the A in Ann, state whether or not, in your judgment, these two lines could or not have been made with one stroke of the pen.

(The counsel for plaintiff here desires to note this objection: "That the whole of the answer to the tenth interrogatory is objected to as containing statements of opinion or supposed facts not in any manner dependent on the skill or experience of an expert."

The above twelfth interrogatory also objected to as leading
984 and as seeking to introduce the opinion of a witness vpon matters not depending on any peculiar qualifications or skill.)

Ans. They do not appear to have been made with one stroke of the pen, for the continuation of the down-stroke is a single line, and yet it is possible that the separate nibs may have made those two lines, and then one nib carried the line downward; but yet I should hardly think this would be the result of a fair use of the pen. It looks more like an attempt at tracing.

Int. 13. Suppose one of those lines to be still wet with the flow of the ink when the other line was subsequently made—are you or not able to form an opinion as to the operation of capillarity in such case? If so, please to state it.

(Objected to as above.)

Ans. If there was but very little ink in the pen the lines might keep separate and not blend by capillarity of the paper; but if there

was a considerable quantity of ink in the pen, those lines would run together when wet. I cannot form any decided opinion.

Int. 14. Please to state what powers of the microscope you used in this investigation.

Ans. In the simple microscope, 3, 7, and 14 linear; in the compound microscope, 18, 33, 110, and 200 linear magnifying power—these powers being those recorded by the manufacturer of the instrument.

Int. 15. State whether or not, in your judgment, the places on the signature to F. W. P., 10, which you have pointed out as indicating the underwriting, might or might not be the phenomena of fluid dispersion or fluid absorption, and please to state some of the facts and reasons which aided your judgment.

(Objected to as above.)

Ans. By the question I understand it refers to what is commonly called spreading of ink on the paper. I can see no signs of the spreading of ink in other portions of the signature, nor in any of the writing in the document. The paper appears to be well sized and in such a condition as to prevent the spreading of the ink by fluid absorption. In the document where there was a large deposit of ink as in some of the letters, and where if any spreading was likely to take place it would have manifested itself, I could discover by the microscope no spreading of the more liquid portion of the ink.

Int. 16. Please to regard the form of the underwriting, to which you have referred, in the S in the signature to F. W. P., 10,
985 and state whether or not the form of the underwriting is such as to enable you to determine whether it was located by the laws of penmanship or by those of fluid absorption. And if so, please explain and describe such form.

(Objected to as above.)

Ans. I don't think that is a question I could answer, as it seems to involve penmanship, which I do not profess to be an expert in. I can only say that the extension of the paler ink beyond the black does not look like the phenomena of spreading or absorption of the fluid part for reasons already assigned.

Int. 18. Please refer to the intersection of the line of said S in Sylvia, and state whether or not you perceive a white island of clear paper between the two lines of the writing. Please state what you do see.

(Objected to as above.)

Ans. I see and have seen on former examinations, a light-colored interstice, but not white—slightly violet by transmitted light from the protrusion of the under ink. All the under ink, so far as I have been able to examine it, has this slightly violet-colored appearance from transmitted light.

Int. 19. Please to examine the top or tops of said S, and state whether the two summits are in the same line of writing or whether the one is to the right of the other; and, if so, which.

(Objected to as above.)

Ans. The thick black ink is a little to the right of the other.

Int. 20. How is it in the case of the a in Howland? State whether or not the black coat extends to the right of the under coat or not.

(Objected to as above.)

Ans. In the up-stroke of a the thick black ink is below and to the right, and in the down-stroke in continuation it is a little to the right, and the pale ink projects up above distinctly.

Int. 21. In the connection between a and n in Howland, please to state whether the under and over writing are or are not sufficiently separated to enable you to distinguish the white paper between them.

(Objected to as above.)

Ans. In the upper first stroke of n there is a distinct, minute space between the pale and dark ink where the white paper is seen.

Int. 22. State whether you have or not examined F. W. P., 1, now before you, in connection with the double writing which
986 you noted in the signature to F. W. P., 10; and, if so, describe the appearance of the signature to No. 1 in these respects.

(Objected to as above.)

Ans. I have. I see no signs here of any double writing. In No. 1 I see no projections of underwriting—nothing that looks like it.

Int. 23. In the signature to F. W. P., 1, do or you not observe any more or different absorption of ink from what ordinarily occurs in well-sized paper?

(Objected to as above.)

Ans. I do not observe any more absorption than occurs in well-sized paper, and no more than occurs in other writing in the document.

Int. 24. In F. W. P., 1, in what direction or directions is such absorption from the main movement of the pen?

(Objected to as above.)

Ans. In all directions, but it is very slight. The cutting of the pen point in the paper is distinctly visible.

Int. 25. State whether or not the cutting of the nibs of the pen is visible in the signature to F. W. P., 10.

(Objected to as above.)

Ans. I discover no marks made by the pen points in the signature to F. W. P., 10.

Int. 26. Please examine the last page of F. W. P., 1, and state what words in it, if any, were written more recently than the body of the instrument.

(Objected to as above.)

Ans. "Page," "Third," "Also Executor of 2nd page of this will," look more recent than the body of the will, but whether written at the same time with the signature cannot be ascertained.

Int. 27. Please inspect the words "eleventh" and "January," and state whether or not they are more recent than the body of the will.

(Objected to as above.)

Ans. The five last letters in Eleventh and the word "January"

are in darker ink than the rest of the will, with the exception of the signature.

Int. 28. State whether any other words on said last page of F. W. P., 1, are more recent than the body of the instrument.

(Objected to as above.)

Ans. I do not see any others that look more recent.

Int. 29. Please to examine the paper now before you, marked F. W. P., 11, and state whether you have heretofore made examination of the same; and, if so, with what facilities and with what care.

Ans. I have examined this paper carefully with the micro-
987 scope, and have made comparative experiments on other written papers, to elucidate the apparent erasure that has taken place in this.

Int. 30. Describe the situation of the erasure to which you refer and the extent of the erasure and obliteration.

(Objected to as above.)

Ans. On the third page, third line from the bottom of the body of the document, after the words "hand and seal this," and before the word "day," there is the appearance of writing having been erased or removed by some liquid chemical reagent, probably some acid and friction, perhaps by a brush. By the washing that has taken place the sizing has been removed, the pulp of the paper softened and part of it removed, probably by washing with water and a brush. The letter d in day to the right of this space, the top of the "th" in thousand underneath in the line below, the top of the letters on in "one," the top of d and L in Lord in the line below the space of erasure show the action of the liquid used in discharging the ink; they being faded out as it were by such action in the same manner as I showed by comparative experiments. The dirty look of the spot where the erasure has taken place is the staining produced by the oxide of iron of the dissolved ink, it not having been entirely removed.

Int. 31. Do you or not, in or about said erasure, observe any signs of a metallic eraser having been used?

(Objected to as above.)

Ans. I do not. The removal of the pulp appears to have been effected by other means.

Int. 32. What chemical mode, if any, exists for detecting the presence of acid, if any remains there in that erasure?

Ans. If any acid remains in the paper, on wetting the spot with pure water, and laying a strip of blue litmus paper, the blue color will be changed to red.

Int. 33. State whether there is any mode of detecting the diffused presence of iron in that erasure—I mean diffused from the iron in the original ink.

Ans. There is; by taking a drop of solution of prussiate of potash, and rendering it slightly acid by muriatic acid, and wetting the surface of the paper where the erasure has taken place, if that brown color which we see is oxide of iron it will instantly form Prussian blue, and color the paper accordingly.

Int. 34. Judging from the appearance of said erasure as
988 viewed by the eye and through the microscope, are you or not able to form an opinion as to what acids or chemical reagents, if any, were used in the process?

(Objected to as above.)

Ans. I should not be able to come to any conclusion on that point without experimenting upon the paper, which could not be allowed. I can see what would have been most likely to have been used, but that would be only inferential; oxalic acid, binoxalate of potash, commonly known as salts of lemon, and citric acid, (which is obtained from the juice of lemons,) being well known to most people as dischargers of ink.

Int 35. Please to state whether the obliteration is or not thorough?

(Objected to as above.)

Ans. It seems to be; I can discover no writing there, and yet it is possible some marks of the original writing might be restored by chemical means.

Int. 36. State whether you have examined the same thoroughly with a view of ascertaining by vision what may be detected, if anything, of the original writing; and if so, with what care, facilities, and success.

Ans. I have examined carefully by the lens, the microscope, and the eye, and can discover no trace of the writing that may have been there.

Int. 37. State whether or not you are able by chemical means to restore writing that has been apparently obliterated by acids; and, if so, by what means and in what cases and to what extent.

Ans. In case the oxide of iron remains where the pen left it, the writing can be instantly made apparent in the form of Prussian blue ink; but if the oxide of iron is washed all through the fibre of the paper around the place, the whole surface becomes blue under the test, so that the writing could not be made out unless the pen marks had caused the ink to penetrate very deeply into the paper, when possibly the forms of the letters might be discovered by a darker blue.

Int. 38. When did you first see said F. W. P., 11?

Ans. I think I did not see that until the afternoon of the 18th of the present month. The others I examined before.

Int. 39. Please say whether you have examined the photograph in R. C. P., Book 1, Volume 1, Plate 12, (the transparent photograph of F. W. P., 10,) or its duplicate, and also please examine the same now critically, and say whether said photograph is or is not, so far as form is concerned, a correct representation of F. W. P., 10. I
989 mean in reference particularly to places where the under writing extends beyond the upper writing as you have testified.

(Objected to as leading and as asking of a witness an opinion in a matter in which he is not shown to have any peculiar qualification.)

Ans. I have examined a duplicate of this photograph, and I now examine this. This is magnified about six times linear from the original. It is correct in showing the places where the under ink is vis-

ible under the covering, but does not show so well as when seen under the microscope of eighteen times linear.

Int. 40. Please examine the transparent photographs now before you, marked R. C. P., Photograph 9, and R. C. P., Photograph 8, purporting to be duplicate photographs of the original signature to F. W. P., 1, and state whether they do or not give correct representations of said original signature, having particular reference to the absorption of ink in the original signature, of which you have already testified.

(Objected to as last above.)

Ans. I have examined one of these before, and I examine both of these now, and find that the photograph is enlarged about seven times linear from the original; that they are both correct enlarged copies of the original as it appears in F. W. P., No. 1. I see here no signs of spreading of the ink in the signature beyond that seen in other parts of the document. It is a correct representation of the original in that respect. There is one exception; in the top of the last letter, d, in Howland, there appears a little dot, which might at first be supposed to be spreading of ink, but which is nothing more than the image of a dot on the other side of the original paper, F. W. P., 1, which was taken in the transparent photograph copy.

Int. 41. At the bottom or heel of the d in Howland in the original and in the photographs appears a small spot. Please state if you have examined the same microscopically; and, if so, state the results of your examination.

(Objected to as last above.)

Ans. I have examined it in the original and in the photographs. There are three dots which have been made since the original ink was dry, apparently by touching the paper with the pen. These dots can be seen distinctly overlying the original writing.

Int. 42. Please examine the photograph Plate 11, in said Volume 1, Book 1, R. C. P., to wit, the lower signature on the page,
990 and also Plate 9 in same book, to wit, the lower signature thereon; and state at the time those photographs were made whether the lower pen mark at the heel or bottom of said "d" in Howland above referred to was or not then photographed.

(Objected to as above.)

Ans. I see two of the dots but not the third. I do not see the lower one.

Int. 43. Please examine the envelope now before you, marked F. W. P., 14, and state whether you have examined the same previously, and with what facilities and care; and if so, whether in your judgment the whole of the manuscript writing thereon was made at the same time or in part at different times, and which.

(Objected to as above.)

Ans. I have examined this envelope with care through the microscope, and find that the words "copy," (with the dash after it,) and "for S. A. H.," were written with a lighter colored and browner ink than the words "Hetty H. Robinson," but the difference is not very marked; it requires close observation to discover it.

Int. 44. State whether or not you have examined the paper now before you, marked F. W. P., 15.

Ans. I have.

Int. 45. Please to state whether in your examination of the signatures to F. W. P., 10, and F. W. P., 15, you did or not, and do or not, perceive any indications of tracing.

(Objected to as to interrogatory three.)

Ans. I examined these papers at my office, and found that the tracing of F. W. P., 10, was more perfect than on F. W. P., 15, the word "Howland [illegible]ot coinciding exactly with the original in the latter document [illegible]h it does in the former. But the names "Sylvia" and "[illegible] exactly coincide with the original document. The [illegible]ne paper F. W. P., 10, exactly coincide with F. W. P., 1, as [illegible] as the signature, so that the signature occupies the same place on both papers. These facts indicate tracing.

Adjourned to 9½ a. m., Tuesday.

991 TUESDAY, *May* 21.

Cross-examination.

And the witness being cross-examined by S. Bartlett, counsel for plaintiff, testifies as follows:

Cross-int. 1. Your business is that of a chemist and mineralogist, is it not? You are not an engraver or a photographer, or a lithographer, or skilled in penmanship in any way, are you?

Ans. I am a chemist, mineralogist, geologist, and naturalist. I am not an engraver, nor a photographer, nor a lithographer, nor specially skilled in penmanship.

Cross-int. 2. Your principal business is, is it not, to make chemical analyses for persons engaged in trade or otherwise of the various articles in which they have an interest?

Ans. This is part of my business. I am also engaged in geological and mining surveys, analyses, and microscopic researches for scientific purposes, and also have frequent occasion to use the microscope in business researches of the arts, commerce, manufactures, and specially with regard to adulterations of food, and in toxicology.

Cross-int. 3. Still your principal occupation is, is it not, to make analyses and to grant certificates for publication to parties who apply to you for that purpose?

Ans. It is part of my business to make analyses of articles of commerce; but the giving of certificates for publication by me is extremely rare.

Cross-int. 4. You embrace in articles of commerce, medicines, liquors, beverages, do you not?

Ans. I never analyze compound medicines except in criminal cases where investigations are made for legal purposes, and never give any certificates concerning them. As State assayer, by authority of law, for two or three years, I made the analyses of the liquors sold by the State liquor agent, and have made analyses of liquors for State agents and temperance societies, and occasionally for merchants

in this and other States of the Union. I do not remember
992 any case of the analysis of a beverage, so-called, but of one, a lemonade suspected to be colored by poisonous articles.

Cross-int. 5. How many certificates, within the last five years, of articles analyzed by you for private individuals or firms have you given for publication in the newspapers by them?

Ans. I have not given any for such purpose, but some of my certificates of analysis have been published by others without consulting me. They had a perfect right to do so, I presume, after they became their property.

Cross-int. 6. Such service is a compensated service, is it not; and you hold yourself out to perform such service, do you not, for the public?

(Objected to as immaterial.)

Ans. The researches and the analyses I make for commercial purposes are, of course, paid for; and I hold myself at the service of the public in the different departments of applied science which I profess.

Cross-int. 7. You mean upon receiving reasonable compensation, do you not?

Ans. Certainly; the act by which I am appointed State assayer says that I may charge reasonable compensation for my services.

Cross-int. 8. Does the act appointing you State assayer provide for your employment in analyzing liquor or beverages for private individuals, and granting them certificates of your analyses?

Ans. The original act specifies ores and metals; when the State liquor agency was established the law required the State commissioner to have all his liquors analyzed by one of the State assayers; the first half of the time the work fell to me, and since then was put in the hands of Dr. A. A. Hayes, the other State assayer, who claimed that he ought to have it half of the time. No provision exists in the act in regard to the analysis of liquors, beverages, foods, or poisons.

Cross-int. 9. So far as you have had anything to do with handwriting it has been in the employment of chemical agents to test or restore the same, has it not?

Ans. Not exclusively.

Cross-int. 10. What else? Name the particular cases and parties, and state whether you were called on to testify in court or not.

(Objected to as immaterial.)

Ans. Comparison of signatures by laying one over the other
993 and examining by transmitted light to see if they corresponded or not; examination of the lines of the writing by the microscope, and comparison of the colors of the inks and their general appearance. One case I remember that I examined in this way was the Miller forgery, but I was not called into court in the case. I do not know why. I have never been called as an expert in writing, nor do I profess to be one. My duties are more properly chemical, as in the restorations above inquired about.

Cross-int. 11. The Miller case was one that involved the interests

of your own relatives, was it not; and you were consulted by them, were you not?

Ans. No; my relatives were in no way concerned in it, so far as I know. I was not called by them; I was called by a lawyer in the case, who was a stranger to me.

Cross-int. 12. Were you ever called upon in any other case? If so, give the name.

Ans. In the restoration of writing I was called upon by an engraver of bank-notes, who was charged with uttering two unsigned notes of $20 each, he coming to me on behalf of the bank by which said notes were issued. I restored part of the signature of one of them—the cashier's name—when the president of the bank called, was perfectly satisfied that the notes had been signed, and discharged the engraver of all suspicion.

Cross-int. 13. Have you now stated every case in which you were called upon in regard to handwriting, except those where your chemical knowledge was required to be applied?

Ans. I had not finished my previous answer when your question interrupted me. In another case I was applied to by Andrew Dunlap, late district attorney in this State, to examine a treasury note which had been altered to a sum of a larger denomination; I ascertained by chemical examination that writing had been removed from the note and other writing substituted. In several of these cases my chemical knowledge was required to be applied, and I suppose I was called on account of my chemical knowledge. I have already stated in the examination in chief the restoration of writing removed by a fermenting dung heap, and the names of the soldiers of Bunker Hill. I do not now recollect any other cases in which I was not called upon on account of my acquaintance with chemistry.

Cross-int. 14. When you answered the thirtieth direct in-
994 terrogatory you had been told, had you not before, that the defendants in this case imputed forgery to the plaintiff?

Ans. The word forgery has not been used by either of the defendants in my presence. When first called upon in this case, I had never heard of the case before, and did not know what it was about; I was merely called on to look at the papers. That was on the 25th of October, 1866. I had been made aware that such a charge was made against the party, the defendant, isn't it? But nothing more than common rumor which is in the community.

Cross-int. 15. Who called on you and showed you the signature of Sylvia Ann Howland and the erasure in F. W. P., No. 11?

Ans. Mr. Stetson.

Cross-int. 16. You do not mean to say, do you, that when you came here to testify that you did not know that the object of the party calling you was to prove a forgery? Please answer directly.

Ans. I inferred that it was to prove forgery, although no such statement was ever made to me by the parties calling me, nor would they answer such inquiries as my curiosity dictated about it, preserving a perfect reticence in regard to the case, saying that I should know all when it got through.

Cross-int. 17. So that you went through with all the signatures, documents, and all the photographs, which have been the subject of your testimony, without the least suggestion from any one that the question was whether the signatures were genuine or not, did you?

Ans. My attention was called by Mr. Stetson to the signatures and photographs very minutely, but he never used the word "forgery" in relation to any of them in my presence; [but I could not help inferring on my examination of the signatures in question, that one was a tracing of another.]

(Clause in brackets objected to as incompetent.)

Cross-int. 18. Can you or not answer the last question directly?

Ans. I consider my answer above to be complete, and I do not see how I can give it more direct, for it may be fairly inferred from the mode of examination that my suspicions were aroused, and that I believed it was a case of a copied signature. Nothing was stated directly by him about it.

Cross-int. 19. Is your intelligence of the question such that you cannot give a direct answer? If you can, please give a direct answer.

995 Ans. As I understand it now, I can say that the question whether the signatures were both genuine was up and was the subject of investigation.

Cross-int. 20. When you gave your answer to the thirtieth direct interrogatory, did it occur to you to consider what object anybody could have in making an erasure in F. W. P., 11, between the words "this" and "day?"

Ans. No; I could not see the object, and I was allowed to read the whole paper, the only one of the documents that I have read through. I could not see the object then and I don't understand it now. I don't know why it was done.

Cross-int. 21. Then if you could not see the object, nor conjecture it after reading the paper, and after being aware that the question was a question of forgery, did it not lead to a little distrust on your part of the certainty of the answer made to the thirtieth interrogatory, founded on your eyesight?

Ans. It did not. The examination was made not merely by the naked eye, but by the microscope.

Cross-int. 22. Then you felt as confident of a fraudulent erasure without an object as you did of one with an object, did you?

(Objected to as assuming a fact not stated by witness.)

Ans. Ans. I don't know as it was fraudulent. I don't know but it was made in order to insert a correction, for since the document is not signed, an alteration before signature could not be imputed as fraudulent. I am puzzled to know why this was done.

Cross-int. 23. You have said in your direct examination that the photographs that you have examined are correct. Have you made any measurements of them or examined them otherwise, so as to say that they are entirely free from distortion?

(Objected to as being examination in chief of a subject not opened in chief.)

Ans. I measured them with the dividers merely to ascertain how much they were magnified from the original. Photographic copies of this kind are good representations of forms, but not as to exact shades of coloring.

Cross-int. 24. Referring to your thirty-ninth direct answer, you then say that in Plate 12, R. C. P., Book 1, Volume 1, the photograph is enlarged about six times linear from the original;
996 does the mark or appearance of what you call the under writing there appear as distinctly as it does when the original is examined by a lens magnifying about six times linear?

Ans. It does not, for reasons already stated. Photography does not give the shades of color so distinctly as seen in the original, and the outline is not so sharply defined as it appears under the microscope.

Cross-int. 25. It, however, appears distinctly, does it not, and there is no difficulty in defining it?

Ans. It does, though not so sharp as when seen direct by the microscope.

Cross-int. 26. Is the difference very considerable in this case?

Ans. It is not.

CHARLES T. JACKSON.

TUESDAY, *May* 21, 1867.

Deposition of Lemuel Gulliver.

I, Lemuel Gulliver, of Charlestown, in the county of Middlesex, aged sixty years, on oath say: That I am cashier of the National Union Bank of Boston, and have been so for over twenty years, and before that was discount clerk in the same institution for nine years; as such clerk I had to examine all the paper that was discounted, and put it in an envelope and cast the interest on it. In performing that duty, at times I felt it particularly necessary to examine the signatures for fear of forgeries. As cashier any question in regard to signature is always brought before me. The capital of our bank is one million dollars. With regard to signatures, we fear more danger in regard to forged checks than in any other paper, and so my attention is more called to those.

(And the witness being further examined by T. M. Stetson, of counsel for respondents, upon interrogatories in writing, testifies as follows.)

Int. 1. Please examine the papers F. W. P., No. 1, F. W. P., 10, and F. W. P., 15, now before you, and state whether you have
997 examined the same, and with reference to the genuineness of signatures to F. W. P., 10 and 15; and, if so, assuming F. W. P., 1, to be genuine, please to state the results of your examination, and your judgment as to the genuineness of the signatures to F. W. P., 10 and 15.

(Objected to on the ground that in the state of the pleadings in this case the question is not open to respondents; also, that it does

not appear that the witness is an expert in relation to the matters enquired of, and because it is not in rebuttal to the plaintiff's evidence, but merely cumulative testimony upon that part of the case where respondents have closed, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I have examined them for the purpose named. The result in my mind was that if No. 1 was genuine, Nos. 10 and 15 were doubtful at least, and my impressions were that they were forgeries, having been traced from No. 1.

Int. 2. What confidence have you in this judgment?

(Objected to as above.)

Ans. It seems very difficult to me to make three signatures correspond exactly in so many particulars as these do without tracing; and then Nos. 10 and 15, by the naked eye, as well as by a magnifying glass, looked as if they had been touched over with the pen, or painted by the pen; there is not the clean appearance that there is in No. 1. I would say in regard to my confidence in this judgment, from a close comparison of these signatures, I have great confidence in the opinion I expressed.

Int. 3. State whether you have examined the large book of photographs marked R. vs. M., F. W. P., the exhibit produced by the plaintiff, and containing small and enlarged photographs of signatures, purporting to be of F. W. Palfrey, Joseph B. Spear, C. A Walker, Saml. W. Swett, J. Q. Adams, Geo. C. Wilde, Stephen Fairbanks, &c., and the accompanying transparent riders in said book; and, if so, please to state what effect, if any, the examination of the contents of said book had upon your judgment and opinion, as you have given it, as to the ungenuineness of signatures to Nos. 10 and 15, F. W. P.

(Objected to as above.)

Ans. I have examined these. The examination of those photographs tended to confirm the opinion expressed, that is, of the ungenuineness of signatures 10 and 15, F. W. P.

998 Int. 4. Please to explain briefly why?

(Objected to as above.)

Ans. The photographs that I examined at first glance appeared to be very much alike; but by close examination I could discover quite a difference, and on covering them with the rider still more difference was seen.

Int. 5. State whether or not you discover in the signatures to F. W. P., 10 and 15, indications of constraint or unnaturalness.

(Objected to as above.)

Ans. I do discover such. They appear to me as if traced, and when inked over there appears a tremulousness in the movement of the pen. It appears very readily, I think, with the naked eye, but much more so with the glass.

Cross-examination.

The witness being cross-examined by counsel for complainant, testifies as follows:

Cross-int. 1. Mr. Gulliver, did you examine the originals of the signatures of the photographs in the book marked R. vs. M., F. W. P., referred to?

Ans. I think I did.

Cross-int. 2. How sure do you feel of it?

Ans. I cannot say positively, but that is my impression.

Cross-int. 3. If you did, then, I understand you to say that you found none among them that so nearly resembled each other as the signatures to F. W. P., 10 and 15, resemble signature to F. W. P., 1?

Ans. There were several of those to compare and examine, and it appeared to me that in examining them closely, Nos. 10 and 15 were more exact imitations of No. 1 than any of those other signatures were of each other.

Cross-int. 4. Have you ever been called to testify in any other case as an expert in case of questioned handwriting?

Ans. I don't recollect whether I have ever before been called into court, but I have frequently had such cases brought to me for my opinion.

LEMUEL GULLIVER.

999 MONDAY, *June* 3, 1867.

Deposition of Henry W. Benham.

I, Henry W. Benham, colonel of corps of engineers of the United States army, and brevet major general, aged fifty-four years, on oath say: I am now the senior United States engineer of Boston harbor in charge of the forts and sea walls now in process of erection.

(And the witness being examined upon interrogatories in writing by T. M. Stetson, of counsel for respondents, testifies as follows:)

Int. 1. State how far your duties have led you to minute and accurate observations and measurements, if at all.

Ans. I have to prepare drawings of forts on fine scales; and, after practice, have found my eye so accurate that I have often discarded the scales for minute divisions less than half an inch. I was also sent to Europe by the government while in charge of the Coast Survey office, one of my duties being to select the highest class topographical engravers, whom I had to select by my own personal criticisms of the specimens of their skill. As one instance of my skill in this I would mention I placed some five or six specimens of one artist in the order in which he successively engraved them, as he admitted, and in two or three of the specimens I pointed out the portions at which he commenced and at which he ended on each plate, as he admitted to be correct.

Int. 2. State when you left West Point; and how long you have been in the engineer corps of the United States army; and how long

you were in charge of the United States Coast Survey office in Washington.

(Objected to for form and as immaterial.)

Ans. I graduated at West Point, in June, 1837, and have been in the engineer corps for thirty years, or from July 1, 1837. I was in charge of the Coast Survey office from the 1st of April, 1853, to November, 1856.

Int. 3. When in Europe, as you have stated, whether or not did you examine into any photographic experiments or uses of
1000 photography in connection with linear drawing; and, if so, what?

(Objected to as immaterial.)

Ans. At the ordnance survey office, in Southampton, I examined the results of their experiments to use photography for engraving. I found that they were in advance of those in our corresponding office in the United States. Their efforts had been directed to getting photographs that should not be distorted by the sphericity of the lens; they had not entirely succeeded; in a line of six inches, about $\frac{1}{20}$ of an inch distortion remained. This was the nearest approach to accuracy that I had seen up to that time. This was between November, 1855, and March, 1856, as I made visits to the office at different times between those dates.

Int. 4. Please refer to the book before you, R. C. P., Book 1, Volume 1, Plate 10, and its rider, also to original papers F. W. P., 1, F. W. P., 10, and F. W. P., 15; and state what, if any, examination and comparison of the original signatures of said photographs you have made, and please to state the results of said investigation.

(Objected to on the ground that in the state of the pleadings in this case the question is not open to respondents; also, that it does not appear that the witness is an expert in relation to the matters inquired of, and because it is not in rebuttal to the plaintiff's evidence, but merely cumulative testimony upon that part of the case where respondents have closed, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I have examined the papers, originals, F. W. P., 1, F. W. P., 10, and F. W. P., 15, and compared them by careful examination with the rider of Plate 10, and that paper with Plate 10, in R. C. P., Book 1, Volume 1, referred to, and the photographs appear to me to be absolutely correct, and of the same scale with the original papers first above mentioned.

Int. 5. State whether you have examined Plate 11 in same volume; and, if so, please to state with what care, if any; and please to give the results of your examination.

(Objected to as above.)

Ans. I also examined Plate 11, and found the three signatures appeared to be increased in equal proportion from Plate 10, after a careful comparison with proportional dividers.

Int. 6. Please to examine R. C. P., Book 1, Volume 2, Plate 5, now before you, and state whether you have made previous

1001 examination of the same, and with what care and with what results.

(Objected to as above.)

Ans. I have carefully previously examined Plate 5, and found it of the same degree of enlargement of the signatures with Plate 11, Volume 1.

Int. 7. State whether you have examined Plate 10, Volume 2, same book; and, if so, state the result of such examination.

(Objected to as above.)

Ans. I have, and found the signatures of the same degree of enlargement as in Plate 11, Volume 1.

Int. 8. Please state whether you have examined Plate 13, Volume 2, and its oiled duplicate scale, with reference to any change of size in divisions of its scale; and whether you have examined the negative from which said prints were made, and with what care, and state the results of your examination.

(Objected to as above.)

Ans. I have examined Plate 13 and its oiled duplicate, and previously the negative of these plates (as assured to me, and I doubt not correctly) and I could not discover the slightest change of size in the scales, when taking central portions and applying them to extremes of the same scale; and I found the long lines of the negative absolutely straight to my closest observation and comparison, by a strained thread of silk, and by using dividers and the prolongation of the lines for equality of portions of the scales. This linear test I consider a full and satisfactory proof that there is no distortion.

Int. 9. State whether in left margin in Plate 13 you compared space 31–32, with spaces 39–40, and 40–41; and, if so, how did you find them?

(Objected to as above.)

Ans. I have compared the spaces referred to, and cannot perceive the slightest difference between space 31–32, and either 39–40, or 40–41, on left margin of Plate 13.

Int. 10. You have stated that you found the lines straight in Plate 13 and its negative. Please to state whether, in your opinion, you are entitled to draw any inference from such straightness; and, if so, what it is.

(Objected to for form and as above.)

Ans. My conviction is that photographs not larger than those, taken with the same lens, if not mathematically perfect and without distortion—and I could discover no evidence that they were
1002 not so perfect—are certainly perfect to all intents and purposes, or to ordinary examinations.

Int. 11. Please to state what knowledge, if any, you have as to the engine-divided paper scales in Packet No. 2, in said Volume 2, and if you know why they were invented and what are their uses.

(Objected to as to four and as immaterial.)

Ans. I have no special knowledge of these scales, but I consider the engine-divided scales to be the only ones that have or approach perfection. The use of paper scales is important to meet the ex-

pansion or contraction of paper on which drawings are made. I once found a drawing I was making of a fort, that remained many months unfinished, to have varied, as compared with the metallic or ivory scale, as nearly as I recollect, about a fifteenth of an inch to a foot.

Int. 12. Please to state what examination you have made, if any, of photographs, Plate 14 and Plate 15, Book R. C. P., Volume 2, and also as to 16 and 17, plates in same volume, and if you have examined them, what care and means were used, and state the results of your examination.

(Objected to as to interrogatory four.)

Ans. I have carefully examined the four plates named and on placing their respective oiled riders above them I find the corresponding signatures to agree.

Int. 13. State whether you have made any special examination of signatures 36 and 15 on Plate 14, Volume 2, in comparison with their originals, R. C. P., 36, and R. C. P., 15, bills of sale, and also whether you have made examination of signatures 8 and 32 on Plate 15, same volume, in comparison with the signatures on original bills of sale R. C. P., 8, and R. C. P., 32; and, if so, please state with what care and with what results.

(Objected to as above.)

Ans. I have examined the four signatures on the two plates specified and compared them with the originals as shown me on the bills of sale, to judge if the rates of enlargement were equal between the middle and extreme numbers on the same page, and by the closest scrutiny I could give them, and with measurements by proportional dividers, I find that the rates of expansion are equal between such middle and extreme numbers.

Int. 14. State whether in the United States Coast Survey the photographic division or department is or is not distinct from the
1003 draughting and tracing division.

(Objected to as immaterial, incompetent, and because the witness has not shown himself qualified to answer the question.)

Ans. I think the photographic division was established just after I left the office. I have had occasion to know that that division is in the hands of Mr. Mathiot, who, when I was in charge, was the electrotypist of the office, a division then entirely distinct from the drawing or tracing division.

Cross-examination.

And now the deponent is cross-examined by F. Bartlett, esq., of counsel for complainant de bene esse, and without waiving objections heretofore taken, and testifies as follows:

Cross-int. 1. What is your opinion of the work of the Coast Survey office for accuracy or otherwise?

(as immaterial.)

Ans. The endeavor is to have it very accurate.

Cross-int. 2. Is it not remarkable and conspicuous for its accuracy?

(as immaterial.)

Ans. Do you mean every part of the work of the office?

Cross-int. 3. I refer to the field sheets, with their corrections and verifications as they are published.

Ans. The field sheets are very often very inaccurate, and require a resurvey. The reduction when made from those field sheets by first-class draughtsmen are, I believe, as accurate as when made anywhere.

Cross-int. 4. In making these deductions and verifying their accuracy, are not the metallic scales, divided in the French method and made at that office, employed?

Ans. I do not recollect that metallic scales were used. Scales made of wood and paper scales divided by the French method were used when I was there. [I think draughtsmen rarely use metallic scales if they can avoid it.]

(Clause in brackets objected to by complainant as irresponsive.)

Cross-int. 5. Look at Plate 10, Book 1, Volume 1, R. C. P., and state whether it is pasted on the sheet that carries it.

Ans. I would like to ask whether I am required to make examinations on the cross-examination. I cannot tell whether this is pasted or gummed.

Cross-int. 6. Is it pasted, gummed, or glued?

1004 Ans. It appears to be attached. That is self-evident to you as well as to me.

Cross-int. 7. Does this fact in any way affect, in your opinion, the size of the signatures on that sheet?

(as incompetent and as being direct examination.)

Ans. That would depend on the manner in which it was attached, which I can't tell.

Cross-int. 8. Look at Plate 11, same book, and state whether that appears to be affixed in the same way.

Ans. It does.

Cross-int. 9. Look at Plate 5, Volume 2, and state whether that appears to be affixed in the same way.

Ans. It does.

Cross-int. 10. Did you examine the riders attached to the last two plates referred to?

Ans. If so stated in my examination in chief, I did. On looking at my memoranda I do not now find any reference to any examination of this rider to Plate 5, Volume 2. I compared the original signatures with the plates, but do not now see any memoranda of comparison of the rider to this plate. I do not find any memoranda either as to the rider of Plate 11, Volume 1. I prefer to refer to my statement in the examination in chief, as to the examinations I made.

Cross-int. 11. Has the negative referred to by you been present during your examination here?

Ans. I saw the negative only at Mr. Whipple's establishment, and I have not seen it here, and it is not now here to my knowledge.

(It is here agreed that the negative referred to is the negative produced and identified by Mr. Whipple upon his examination as a witness.)

H. W. BENHAM.

1005 MONDAY, *June* 3, 1867.

Deposition of John Prendergast.

I, John Prendergast, of Boston, in the county of Suffolk, aged twenty-one years, on oath say : I am a photographer at John A. Whipple's, Washington street.

(The witness here being examined on written interrogatories, by counsel for respondents, testifies as follows :)

Int. 1. Have you seen the negative of Plate 13, R. C. P., Book 1, Volume 2; and, if so, what did you have to do with it the time the impression was made ?

Ans. I have. I prepared the plate before putting it in the frame, and after it was exposed I took it out of the frame and developed it, that is, brought out the picture.

Int. 2. State whether you have noticed the spring or warp that is in that glass, and if so state whether such springs or warps are common or otherwise in glass.

(Objected to for form.)

Ans. I have noticed the spring in that glass, and such springs are common in the glass which we use.

(Answer objected to by complainant on the ground that the witness has not shown himself qualified.)

Int. 3. State whether or not there is any way of getting rid of such spring or warp when the impression is taken ; and, if so, state how it is effected.

(Objected to on the ground that it is not shown that the witness is qualified to answer the question.)

Ans. There is. We usually take it off by four springs, one in each corner of the frame and press it up in that way.

Int. 4. State whether the negative is or is not fastened into this spring frame before it goes into the camera.

Ans. I don't know as I understand the question.

Int. 5. By fastened I mean put into the frame.

Ans. It is.

Int. 6. And is the frame with the negative in it put into the camera ?

(Objected to for form.

1006 Ans. The frame with the prepared plate is put into the camera.

Int. 7. Now state what those springs in the frame are for.

(Objected to as immaterial.)

Ans. Pressing a prepared plate perfectly flat.

Int. 8. State whether you put the prepared plate from which this negative was made into such a frame.

(Objected to for form. Question withdrawn.)

Int. 9. State, if you know, who put the prepared glass which was made into this negative into the frame.

Ans. I did. I also took it out after the impression was obtained.

Int. 10. Now state whether or not the frame th en used was or was not the spring frame you have described.

Ans. It was.

Int. 11. How long have you been engaged in this business, and how much experience have you in preparing the plates and negatives?

Ans. A little over five years. In this branch I have been engaged a little more than two years.

Int. 12. State whether or not, to the best of your knowledge, this glass was pressed flat at the time the impression was taken.

(Objected to as immaterial.)

Ans. To the best of my knowledge it was.

Cross-examination:

(The witness being cross-examined by F. Bartlett, esq., of counsel for plaintiff, on interrogatories in writing, testifies as follows.

The cross-examination is stated to be de bene esse, and not waiving any objections.)

Cross-int. 1. What is the difference between cylinder glass and plate glass?

Ans. Plate glass is made of better material and is perfectly flat. Cylinder glass is not made of so good material and usually is slightly hollow.

Cross-int. 2. Of what kind of glass was the negative from which these scales were made?

1007 Ans. I suppose it would come under the head of cylinder glass, though I can't tell the quality. I know it is not plate glass.

Cross-int. 3. Is not plate glass considered the best glass upon which to take accurate negatives?

(Objected to as immaterial.)

Ans. It is; but I have never used it in negatives. It is to the best of my knowledge.

Cross-int. 4. Do you not know that the curvature of a negative, when the concave side receives the collodion, is favorable sometimes to the accuracy of the work?

(Objected to as immaterial, inapplicable, and as assuming facts not proved.)

Ans. I do not know.

Cross-int. 5. Then you never heard or do not know that the error or distortion of a lens may be somewhat qualified by using a curved negative?

(Objected to as above.)

Ans. I have heard that if a glass was made with a certain curve it would nearly meet the distortion of the lens.

(Answer objected to by the respondents as hearsay.)

Cross-int. 6. When you clamped down by the four springs you have spoken of in the frame the glass plate upon which the negative was taken, from which Plate 13 was printed, did you test the accuracy of the level of the surface of the plate by a spirit-level?

Ans. I did not.

Cross-int. 7. What was your method of testing it; simply your eye?

Ans. The frame is made perfectly even, and the springs are supposed to put it in a flat position. I did not test it.

Cross-int. 8. What is the frame made of?

Ans. Of wood.

Cross-int. 9. Is not one side of it at least constantly wet?

Ans. It is not; it is moist, not wet. It is not wet with silver; they have very little silver in the plates, and it is only wet down at the edges.

Cross-int. 10. When did you fix this plate in the way you described?

Ans. I cannot tell the time. I could give a guess.

Cross-int. 11. Was it six months ago?

Ans. To the best of my knowledge it was not.

Cross-int. 12. Was it four months ago?

Ans. I don't want to answer that.

1008 Cross-int. 13. You are not expected to answer exactly—give us your best impression.

(Objected to because the witness says he does not know.)

Ans. I remember making the negative, but not the time. It would be all guess-work with me.

Cross-int. 14. Since making that negative you have from time to time used the same frame and levelled down other plates, have you not?

(Objected to as immaterial.)

Ans. I have.

Cross-int. 15. Since then when was your attention first asked to the question whether or not the plate from which it was made was level?

Ans. To-day.

Cross-int. 16. Have you any better memory as to whether this plate was flat than as to the others that you have taken since?

Ans. I have not.

Cross-int. 17. Is the instrument by which these pictures were taken ever employed in making groups?

(Objected to as direct examination.)

Ans. I do not know.

JOHN PRENDERGAST.

TUESDAY, *June* 4, 1867.

Deposition of Eben N. Horsford.

I, Eben N. Horsford, of Cambridge, in the county of Middlesex, aged forty-eight years, chemist, and formerly Rumford professor and lecturer upon the application of the mathematical and physical sciences to the useful arts in Harvard University, and professor of analytical chemistry in the Lawrence scientific school connected with said university, on oath say: I was professor in Harvard for

sixteen years and up to the year 1864, and am a member of the American Academy of Arts and Sciences. I am familiar with the use of the simple and compound microscope.

1009 (And in reply to interrogatories in writing, by counsel for respondents, witness testifies as follows:)

Int. 1. Please to state what experience and knowledge, if any, you have in the matter of the manufacture and properties of paper—its sizing, varieties, and peculiarities. State fully.

(Objected to as immaterial.)

Ans. I have experimented about two years upon the problem of protecting bank notes from counterfeiting, alteration of the denomination, and copying by photography; and, in so doing, have made hundreds of samples of paper of various qualities and kinds, and numerous varieties of sizing and numerous kinds of ink, and have printed upon these samples of paper with type and copper and steel plates, and have, in short, substantially repeated most of the experiments that have hitherto been made in the production of surety paper. Paper may be defined to be felted vegetable fibre, which, for writing purposes, is coated with a varnish of gelatine or size—size being composed of substances possessing substantially the properties of gelatine. The coating of gelatine fills up the spaces between the fibres and prevents the capillary action of the felted sheet, without which a liquid ink would spread.

Int. 2. What experience and knowledge, if any, have you upon the subject of lost or obliterated writing?

(Objected to as above.)

Ans. I have occasionally been called to detect traces of writing removed by chemical agency, and have instructed my students in the use of the chemical agents with which remaining traces of ink may be recognized.

Int. 3. Please state what knowledge and experience, if any, you have as to inks and their properties.

(Objected to as above.)

Ans. I have been called professionally to analyze many inks, have instructed manufacturers how to improve them, and have made a great many varieties myself. The writing ink generally in use hitherto and very largely, perhaps generally now, has a basis of a proto-salt of iron, generally copperas, which has been boiled with vegetable infusion substantially the same as that found in nutgalls, to which generally a small quantity of mucilage or gum-arabic has been added. This preparation, excluded from the air, re-

1010 mains in solution in water, but upon being spread upon paper and exposed to the air, experiences a chemical change, rendering the iron comparatively insoluble in water, and what was before a dye becomes in part a pigment.

Int. 4. State what examination, if any, you have made of paper F. W. P., 11, now before you, in reference to the last part thereof; and, if you have examined it, state the results of such examination.

(Objected to on the ground that, in the state of the pleadings in

this case, the question is not open to respondents; also, that it does not appear that the witness is an expert in relation to the matters inquired of, and because it is not in rebuttal to the plaintiff's evidence, but merely cumulative testimony upon that part of the case where respondents have closed, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I have examined it with the aid of a microscope, particularly the portion in the last sentence commencing "In witness whereof," and I find that the sized surface of the portion to the right of the middle of the second line has been treated with a solvent of the gelatine of the size, and rubbed, by which the skin of the paper has been broken through; and it has also been treated with an agent or agents that have communicated to the paper a rusty look, such as I have found is communicated to sized paper written upon with copperas and nutgalls ink in 1862, and removed with the aid of a solution of oxalic acid applied with the aid of a paper brush, and allowed to dry.

Int. 5. What, if anything, do you observe in the letters in the vicinity?

(Objected to as last above and as leading.)

Ans. I observe portions of the ink of the letters in the vicinity partially removed, and the rusty surface surrounding the portions so defaced.

Int. 6. What, if any, examination have you made of the paper now before you, F. W. P., 10, in reference to the question whether its signature has or not been rewritten; and, if you have examined it, please to state fully the results of your examination?

(Objected to as to interrogatory four.)

Ans. I have repeatedly examined this signature with the aid of the microscope ranging from one and a half to nine diameters, and I have prepared some illustrations of what I found, my hand being guided while the signature was under the microscope.

1011 I have taken a photograph of the signature, of normal size, and placed it upon the original and found it to coincide accurately. I have then taken an enlarged photograph, and with proportional dividers have found that this enlarged photograph in its enlargement has not distorted, but the proportions justly preserved; the marginal outline of this enlarged photograph I have accurately traced through transparent paper, and then have outlined the filling up within this marginal outline with a pencil, my eye, with the aid of a microscope, resting on the original signature, Having completed the outline of the filling up, I filled up the body of the letters with a pencil, still guided by the original signature, and with the aid of the microscope. This done, I covered the pencilling with mucilage to prevent injury. From the photograph of this size, with the aid of a standard pantagraph, I still further enlarged certain of the letters, with a view to presenting in greater prominence the peculiarities of the original signature to F. W. P., No. 10, as seen under the microscope.

Int. 7. If your examination was of Exhibit F. W. P., 1, in connection, please to let any further answer you may make refer to that also.

(Objected to for form and as above.)

Ans. At the same time that I compared the normal photograph of No. 10 with the original F. W. P., No. 10, I also compared the normal photograph of No. 1 with the original F. W. P., No. 1, and found it to be accurate: and at the same time that I tested the accuracy in proportion of the photographic enlargement of No. 10, above referred to, I tested the accuracy of the photographic enlargement of No. 1. I traced through transparent paper a copy of the photographic enlargement of No. 1 in the same manner, with the aid of the microscope in filling up, and with the same care that I had observed in filling up the traced copy of No. 10.

I wish to state, in order to make my general reply more intelligible, that the breadth of the ink mark made by a pen upon sized paper is determined ordinarily by the space between the outsides of the nibs of the pen at the moment the ink is shed. Where the nibs, by pressure, in order to increase the distance between them, aided by the solution of the size under the action of the ink, penetrates to the unsized or less sized portions below the surface of the size, the capillary action of the felted fibre comes into play, and increases the
1012 discharge of ink at the margins of the stroke, giving to the stroke the appearance of two dark lines, with a lighter shade (due to the smaller amount of ink shed) between the two lines.

It is difficult to make a broad mark at a single stroke, the margins of which shall not be more deeply colored than the central portions.

In comparing the photograph of No. 1 enlarged with the photograph of No. 10 enlarged, the letters of No. 1 have the look of having been made at a single stroke. This look is more marked in the original than in the photograph; the look referred to being that alluded to above as made by the two nibs giving two lines with a lighter colored filling.

The corresponding letters of No. 10 generally lack the lighter space between the darker margins, and in that respect bear evidence of having been filled up by subsequent writing.

I think I ought here to make an allusion to an exhibit, (here produced and put into the case, and marked by the examiner R. C. P., Diagram 1, Horsford,) as illustrating the peculiarities of the broad lines in signatures 1 and 10, F. W. P. The portion of the exhibit referred to consists of one broad, dark, vertical stripe of uniform dark shade, and another stripe, also vertical, the margins of which are deeper than the central portions, (marked respectively A and B on the diagram.)

It is also difficult to make a mark that shall be straight on one side and serrated or toothed on the other—the natural tendency of the pen being, under pressure, to make a broader mark, both nibs departing, one on one side and the other on the other, of the general direction of the stroke, and to return to this general direction, both

nibs moving more or less, according to pressure, towards what may be called the axis of the stroke.

In comparing the photographs of No. 1 and No. 10 with each other, and more strikingly in comparing the originals under the microscope we see evidence according to this general principle that No. 1 was produced by single strokes, while No. 10 could not have been.

In illustration of this quality of writing, I submit exhibit (marked R. C. P., Diagram 2, Horsford.)

I find the hair-strokes of No. 1 uniformly pale, while the hair-strokes of No. 10 are uniformly dark. I find evidence of two strokes of the pen in the letter S in Sylvia in No. 10; first, in that one of the strokes projects above the other at the top of the highest por-
1013 tion of the letter; in the bottom of the curve of the flourish of the letter at the commencement, and at the intersection of the upward stroke of the flourish with the main stroke of the S; and in the overlapping of two strokes, one on the left side of the upper part of the S, and the other on the upper side of the upward stroke of the flourish at the intersection with the upright portion. As illustrating this observation I refer to Figure C, Diagram 1, before presented.

I find evidence of double writing at the commencement of A in Ann, and also in the loop at the top in signature to No. 10; and also in the loop at the top of the A, where there is evidence that after the making of the upper stroke the pen was raised from the paper, brought down upon the upward hair-stroke near the top, and drawn nearly parallel with the stroke first made, and then continued down. For illustration I present an exhibit, (marked R. C. P., Diagram 3, Horsford,) and refer to Figure A on the diagram.

I find evidence of double writing in the last part of the d in Howland—signature No. 10—where the first downward stroke starts at a greater elevation than the second, and where the nib of the pen in touching the paper a very little out of line, glides to the right, making a clean cut end to the second downward stroke. I illustrate by Figure D, in Diagram 2, before presented.

Also, in the a in Howland, same signature; first, in the two strokes at the top of the latter half of the letter where the pen has been put down twice at unequal elevations; and, second, in the right-hand upward stroke at the bottom of the first half of the letter where the earlier and paler stroke projects above, while the other is narrow, wavy, and makes a distinct limited line within the margin of the first. I refer, for illustration, to Figure E in same Diagram 2. Also, in the double stroke at the top of the first half of the same letter.

Also, in the second part of H in Howland, there are two loops at the top, and marked indication of the arrest of the first stroke, (i. e. the upper,) and the arrest, also, of the second stroke, as if the first had been produced under the influence of habit, and the curve was short, and the second, also, too abrupt, was arrested at the intersection of the hair-stroke, and then carried down in a direction more nearly parallel to that of the first part of the H, and more di-

1014 vergent from the direction of the first loop. I illustrate by reference to Figure B, Diagram 3, before presented.

I find, also, evidence of double writing in the i in Sylvia, in the projection of one stroke beyond the other, at the bottom; also, in the interruption of one stroke just before reaching the a, while the other is continuous; also, in the first part of the a, where the one stroke projects beyond the other; also, in the second part of the a, where one stroke projects above beyond the other; also, at the commencement of the upward hair-stroke where the paler line projects below. For illustration of these points I refer to Figure D, in Diagram 1, heretofore presented.

Also, in the y in Sylvia, where the pale ink projects beyond and fills up the outline of the first portion of the y, as shown in the exhibit which I now present, (marked R. C. P., Diagram 4, Horsford.)

I find other instances of double writing in No. 10 signature, which are exhibited in the diagrams already submitted, but those I have mentioned I consider the most important.

I find generally in No. 1 the strokes may be characterized as having been made by a dye; while in No. 10 there is an underwriting of dye, and an imperfectly superposed writing, so uniformly dense, both in the hair-strokes and the broad marks, as to indicate the use of a pen somewhat in the capacity of a brush, with a pigment made of thickening ink.

(Answer objected to by plaintiff's counsel, and also the last prior answer, because the witness is wholly incompetent to give opinions as to handwriting, which forms the larger portion of his answers; as also, that the witness has not shown himself in any way competent to testify as to the accuracy of any photographs referred to by him, or as to their scale of enlargement, and the cross-examination of the witness is made de bene esse, and not waiving this objection. And the diagrams produced are also objected to as incompetent, as the witness has no qualifications to make such diagrams, and as such evidence is in itself incompetent.)

Int. 8. If you have formed any judgment from your examination whether said F. W. P. (signature) No. 10, has been rewritten or not, please to state it.

(Objected to, because it does not appear that the witness is qualified as an expert, and because such examination is not open to the defendants at this stage of the case, and as otherwise incompetent.)

1015 Ans. I have; it is that it has been rewritten, or painted, as the expression is.

Int. 9. State whether you find in the S and last a in No. 10 signature, of which you have produced diagrams, any similarity or dissimilarity to the forms of ink dispersion.

(Objected to as above and as assuming facts not proved.

Ans. I find that the outlines of what I regard as the first and second writing are definite and show two distinct pen-strokes—the one for one margin of the underwriting, and the other for the corresponding margin of the superposed writing. (The witness here asks what counsel mean by ink dispersion.)

Int. 10. I mean the forms displayed by the flow of ink into the paper from the pen-stroke; that is the natural dispersion of the ink into the substance as distinguished from an artificial form.

(Objected to as above.)

Ans. I find a slightly irregular outline along the margin of the dark stroke in the upper part of the letter S, appearing as if the second mark in point of time was made before the first had become wholly dry, and coloring unequally and partially that portion of the under-stroke extending to the left, but not obscuring in the original the mark of the pen-nib indicated in exhibits, Diagrams 1 and 4. In a in Howland there are no indications of fluid dispersion.

Int. 11. Could or not the form in the original S in No. 10 signature, which you have indicated by the pink, be the form of a fluid dispersion from the black?

(Objected to as above.)

Ans. I think not.

Int. 12. State whether you noticed any tinting in the underwriting in signature to No. 10; and, if so, what?

(Objected to as above.)

Ans. I have noticed a pale ink shade in some parts of which there seemed to me to be a faint tint of sepia, reddish tint.

Int. 13. What does the pink portion of your diagrams represent?

(Objected to as above, and also as to the diagrams, as themselves incompetent.)

Ans. It is designed to represent the space traversed by the pen and ink in the first writing when it has not been covered up by the second writing; and is further designed rather to show the space traversed in its relative proportions than as a literal exhibi-
1016 tion of the minute outlines of the inking, which however important for other purposes were of no consequence in the presentation of the idea those colored drawings were designed to illustrate.

Int. 14. State what experience, if any, you have had in draughting and measuring, and in minute observations.

(Objected to as immaterial.)

Ans. I have had occasion to make mechanical drawings in the course of drawing instruction. I have received and given courses of instruction in perspective and in crystallography, and in such professional service as falls to the lot of one engaged in chemical and physical instruction in college.

Int. 15. State whether you have examined the original bills of sale marked R. C. P., exhibits; and, if so, please to state what similarity or dissimilarity you observed between the rewriting in their signatures and that of F. W. P., 10.

(Objected to, because it does not appear that the witness is any way qualified as an expert, and because this evidence is not open to respondents at this stage of the case, and as ohterwise incompetent.)

Ans. I have examined the signatures to the original bills of sale. Some of the signatures bear marks of having been retouched or corrected, and these signatures show on the part of the writer an ina-

bility readily to adjust the focus of the eye and an inability to rectify defective lines, partly due to the imperfect vision and partly due to a certain stiffness and unequal rapidity of motion of the pen, sometimes the effect of age or ill health affecting the nerves, and sometimes constitutional; while the signature No. 10 shows a delicate, nicely-poised hand, acting under a good eye, and moving under the definite purpose of covering up and deepening the tint of a previous tracing.

(Objected to by plaintiff as expression of an opinion by the witness on a matter on which he is clearly incompetent to testify.)

Int. 16. State whether you have observed any difference in the movement of signature to F. W. P., 15; if you have examined the same when magnified, from the movement of F. W. P., 1. If so, please explain. I mean as to the character of the mark made by the pen.

(Objected to as above.)

Ans. I have examined the signature 15, and find that while in the signature No. 1 the strokes were uninterrupted in the rate of their flow, as a general statement, they are in 15 distinguished on account of the interruption in the flow; that is, in No. 15 the pen-
1017 marks, especially as shown in A and H, are knotted as if produced by short strokes and pauses, permitting at the end of each stroke a trifling, but marked, accumulation of ink, while the main portion of the short line is less dark from the pen having passed over it without pausing.

(Objected to by counsel for plaintiff as to last answer.)

Int. 17. State whether in signatures to F. W. P., 10 and 15, you do or not discover indications of tracing.

(Objected to as above.)

Ans. I do discover indications of tracing in both.

Int. 18. State whether you have examined to-day by superposition No. 10 and No. 15 over No. 1, F. W. P., in their present soiled condition; and, if so, whether when so placed over is or is not the under signature sufficiently visible to trace through the paper?

(Objected to as above and for form, and as assuming a fact not proved.)

Ans. I have placed Signatures 10 and 15 over 1 to-day, and found No. 10 covered No. 1, and found No. 15 to cover No. 1, with two changes or three of position of 15. When the paper containing No. 10 was displaced from its position of exactly covering No. 1, then No. 1 could be readily traced through the paper on which No. 10 was written. The signature No. 1 was readily traced through the paper of No. 15 also.

Int. 19. What, if any, knowledge and experience have you of the art of photography?

Ans. I was one of the first in this country, after the publication of Daguerre's discovery, to establish in Albany a daguerrotype apparatus for the pupose of taking landscapes and portraits, twenty-eight years ago.

Int 20. State what examination you have made of Plate 11, Book

1, Volume 2, R. C. P., if any, in connection with the original signature; and, if you have made such examination, state the results.

(Objected to as to interrogatory four.)

Ans. I have compared the photograph of normal size with the original No. 10, and this photograph, with the aid of proportional dividers, with the successive enlargements shown on the page, and have found them enlarged in just proportion of marks, spaces, and relative positions, and without distortion.

Int. 21. You have stated that you are familiar with paper. Please to state what appropriateness there is in very minute meas-
1018 urements as applied to such a material.

(Objected to as to interrogatory four, and for form.)

Ans. Most paper in the process of manufacture acquires an arrangement of the fibres in larger proportion parallel with its natural edge, which makes it easier to tear in the direction coincident with the prevailing direction of the larger portion of the fibres, and makes it liable to expand by absorption of moisture more in a direction at right angles to the direction of these prevailing fibres, so that paper which has certain dimensions when wet will not only shrink on drying in all directions, but will shrink more in the direction at right angles to the prevailing direction of the fibres. If the paper is unequally thick, or a direction be taken not coincident with the direction of greatest contraction on drying, on wetting, and again drying, the paper will be rumpled; and this more or less takes place in almost every instance of wetting and drying of paper, unless the paper is confined, as, for example, under pressure. It is obvious that paper will vary in dimensions with the measure of moisture in the air, and admeasurements are made with difficulty on the Coast Survey atlases, printed from accurate copper-plates, for this reason. It is, therefore, obvious that scales graduated upon paper are not invariably correct.

Int. 22. State whether a power of 9 diameters microscope, is or is not sometimes called eighty-one power, ten diameters a hundred power, and so on. Explain.

(Objected to as immaterial.)

Ans. Dealers usually represent the power of the microscope by comparing the area of the enlarged image with the area presented by the object. These areas are as the squares of their diameters.

Int. 23. About how many diameters of a letter of ordinary manuscript, for example "a" as in No. 10, F. W. P., could be included in the field of a compound miscroscope?

(Objected to as above.)

Ans. It would vary with the power of the eye-piece employed.

Adjourned to Wednesday, June 5, 1867.

1019 WEDNESDAY, *June* 5, 1867.

Cross-examination.

And now the witness being cross-examined by S. Bartlett, esq., of counsel for plaintiff, says:

Cross-int. 1. Since you ceased to be professor at Harvard College,

where have you been and where have you lived and what have been your pursuits? State in detail.

Ans. I have been in Cambridge; have lived there. I am interested generally in manufacturing chemistry, which has required my advice and some experimental research in my laboratory.

Cross-int. 2. That does not answer the question. Please answer it in detail.

Ans. I am interested as proprietor and inventor in the manufacture of phosphoric acid for self-raising flour, in sulphite of lime for paper manufacturer's use, in roseoline, lazuline, luteoline, superphosphate, bone-black, and various other articles used by cotton and woollen printers. I have devised and superintended, at the instance of the government, the production of a marching ration for the army. These have been my more prominent subjects of interest.

Cross-int. 3 Part of your business has been to grant certificates to others for compensation, has it not?

Ans. I don't understand the question.

Cross-int. 4. What do you understand by the question?

Ans. My recollection affords me no data for understanding it.

Cross-int. 5. I repeat the question; please have it again read to you, and say whether or not you have the least appreciation of its meaning.

Ans. If it refers to professional analysis, I have made such, and received pay for it; but I have not known such records of analysis to be called certificates.

Cross-int. 6. Have you not, since you ceased to be professor in Harvard College, given frequent certificates for compensation, to be published by parties receiving them from you, in the newspapers?

Ans. I have not.

1020 Cross-int. 7. You have never known any such certificates to be published, have you?

Ans. Before answering the question, I need to know what certificate, in the sense used, means.

Cross-int. 8. What do you understand by the use of the word "certificate?"

Ans. I should refer to the dictionary.

Cross-int. 9. That is the best answer you can give to the question, is it?

Ans. That would furnish the best answer.

Cross-int. 10. I repeat the question. Will you state whether that is the best answer you can give to the question?

Ans. The dictionary will give the best answer.

Cross-int. 11. And you do not know what answer the dictionary would give, do you?

Ans. I could not cite it with precision.

Cross-int. 12. So that, for want of being able to cite with precision what definition the dictionary gives, you have been unable in your several last answers to state what you understand by the term certificate, have you?

Ans. I am unable to comprehend the question, because it seems

to intimate that the numerous certificates I have given to my pupils to assist them as they deserved to be assisted, were given for money.

Cross-int. 13. Then you could not give us, in answer to the various questions above put to you, what you understand was the meaning of the term certificate without referring to a dictionary, because the question seemed to intimate that you gave certificates to your students for money; is that what you mean to be understood?

Ans. As the questions evidently contemplate another kind of certificate than has occurred to me, the witness respectfully asks that such general form of certificate as is contemplated in the questions may be submitted to him.

Cross-int. 14. Then when those questions were put to you, you did contemplate some form of certificate. If so, why, in answer to the questions so often repeated, did you not give us what you understood to be meant by the word, instead of referring us to the dictionary?

Ans. The question is already answered.

Cross-int. 15. If that be so, will you repeat the answer?

1021 Ans. I repeat the answer to the twelfth cross-interrogatory.

Cross-int. 16. Then you mean to say upon your oath, do you, that that answer furnishes the reason, and the sole reason, why you could not give us what you yourself understood to be the meaning of the word certificate, in answer to the numerous questions put to you?

Ans. I do; except in so far as I have answered the questions as they have been put.

Cross-int. 17. Have you answered in any manner, and. if so, in which answer, what you yourself understand to be the meaning of the word certificate?

Ans. In what I said in regard to reports of professional analyses, and in regard to testimonials to students, I have.

Cross-int. 18. Then when you answered the numerous previous interrogatories in regard to the meaning of the word certificate, you understood, did you not, that both those classes were embraced by the word certificate? If so, why did you not answer accordingly?

Ans. The question has been answered.

Cross-int. 19. I repeat the question, and ask you to answer it again if you suppose it has already been answered.

Ans. In addition to what I have said in the replies to the fifth, eighth, twelfth, sixteenth, and seventeenth cross-interrogatories, inasmuch as I have requested a general form of certificate, such as was contemplated in the questions to be submitted to me, I know not how I can further reply.

Cross-int. 20. And this is the best answer you can give, is it, to the question what the meaning of the word certificate was in your mind?

Ans. It is.

Cross-int. 21. That is to say, you had in your mind, as you have stated, certificates of analyses and certificates given to students, and yet you could not, without referring to the dictionary, tell us what you understood by the word certificate; is this so?

Ans. I referred to the dictionary as giving the best definition.

Cross-int. 22. And this is the only answer you can make, is it?

Ans. It is.

Cross-int. 23. To go back—will you now state how many certificates of analyses, and of the character or utility of various
1022 articles you have given for money since you ceased to be connected with Harvard College? State the number as nearly as you can.

Ans. I can recall but one; the number must be small; I might recall more, possibly, by taking time; I have declined most of that kind of service.

Cross-int. 24. Did you fix your compensation in the present case before you began to make preparations for doing what was submitted to you?

(Objected to as immaterial.)

Ans. I did not.

Cross-int. 25. It is not to be an uncompensated labor, is it?

Ans. I regard it as professional service.

Cross-int. 26. What measure of compensation do you expect to receive?

Ans. I have not determined.

Cross-int. 27. State as nearly as you now estimate it.

Ans. In general my professional service is compensated according to the time and labor bestowed, and what it should be in this case I have not determined.

Cross-int. 28. How much time and labor have you bestowed in this case, and what rate of compensation do you expect?

Ans. I can't determine the time till I get through, and I have not thought what ought to be the rate.

Cross-int. 29. Think it over and tell us the time already employed, exclusive of your time as a witness.

Ans. My attention was drawn to the subject a week ago last Friday, and, while my time has not been wholly given to the subject, the matter has been pretty constantly before me from that day to this.

Cross-int. 30. Do you expect to receive five hundred dollars, or how much less sum will content you?

(The counsel for respondents here ask the examiner to instruct the witness as to his obligation to answer the question. The examiner thereupon instructs the witness as to his rights and as to the power of the examiner under the rules in a manner not objected to by counsel of either party.)

Ans. My usual professional fee is from twenty-five to fifty dollars a day, but how much in this case, whether the maximum or minimum price for the time employed be fixed upon, would be determined by my estimate of the labor.

1023 Cross-int. 31. Then you expect nothing above the maximum, do you? Will you state how many days you have been employed for which your charge is a per diem?

Ans. I do not. I should think five or six days.

Cross-int. 32. Who first called upon you in this matter?

Ans. Mr. Stetson.

Cross-int. 33. He stated to you, did he not, which of the signatures of Sylvia Ann Howland he supposed to have double writing or to be traced?

Ans. He placed one signature over another. I had seen in the papers the theory of tracing, and, I think, recognized without an intimation the signature of No. 10 as the problematical signature.

Cross-int. 34. Please to answer the question.

Ans. I think he did not.

Cross-int. 35. He made no suggestion then, did he, of the subject to which your attention was to be called?

Ans. Why, certainly he did.

Cross-int. 36. But he did not say, did he, that the subject of double writing in 10 and 15 was a matter that you were to regard in any way?

Ans. I recollect being impressed with the design of Mr. Stetson to see what I should myself discover, without any aid from him. His first remark was, "You have heard of the Howland will case, I suppose?" I do not remember what immediately followed, but he showed me the original signatures, and we took them to the window and placed one over the other; and beyond this I do not recall an intimation of what I was to look for during my first microscopical examination.

Cross-int. 37. Then the fact is, is it not, that without any mention to you of the question of double writing, you supposed you saw it first, and mentioned it to him, didn't you? Please to answer directly.

(The plaintiff's counsel here desires note that this question is put de bene esse, and without waiving objection to the competency of the witness heretofore taken. Respondents note that they claim that the witness must be examined in the usual way and with the usual liabilities.)

Ans. No, sir; it was understood by me to be a matter of public talk.

1024 Cross-int. 38. What was understood by you to be a matter of public talk; and from whom did you understand it?

Ans. That a signature to a will or important paper had been produced by tracing and retouching. I understood it from common talk.

Cross-int. 39. How long before you were called on had you heard this common talk? and name any single individual who told it to you.

(Objected to as immaterial.)

Ans. I can't say how long. I only remember looking at the signature for something I expected to find.

Cross-int. 40. You have stated accurately what you had heard and all that you had heard before you were called on, have you not? And by reason of what you have thus stated, you expected to find underwriting, did you not?

Ans. Accurately, as far as I have said; perhaps not all. And by what I had heard, and by what I knew or had read of forgeries and counterfeits, I was led to look for indications of underwriting. I

may add that I was doubtless influenced by the circumstance that quite a number of forged documents and signatures to counterfeit bank-notes have been submitted to me. For further reply I refer to my answer to first interrogatory in chief.

Cross-int. 41. You were informed, were you not, before you began the examination made by you of the documents, or during its progress, that testimony had already been taken by the respondents in regard to this matter of double writing?

Ans. In the progress of it I was.

Cross-int. 42. And of the names of the witnesses that had been called by the respondents to support that theory, had you not—or some of them?

Ans. I did not understand question forty-one cross before. I misunderstood the application of the word respondents, but the answer would be the same to that interrogatory. I have heard of some of the witnesses referred to.

Cross-int. 43. Was the name of Charle T. Jackson among those you had heard of?

Ans. Yes, sir.

1025 Cross-int. 44. And what he had testified about the smutch or erasure in F. W. P., 11, had you not?

Ans. Not until after the paper had been submitted to me and I had, from experiments and examination made, given my opinion as to what the rusty look and general appearance indicated.

Cross-int. 45. You discovered the double writing in F. W. P., No. 10, did you not, the moment you put your eye on it, or was it not far from being obvious?

(The plaintiff's counsel notes that the above is put de bene esse, and not waiving objection heretofore taken to competency of witness.)

Ans. It had a suspicious look to the unaided eye, in the presence of the genuine signature to No. 1.

Cross-int. 46. Then, although before you were applied to you had heard that there was double writing in the signature to No. 10, you could not discover it, could you, in your first examination?

(De bene esse as above.)

Ans. I had heard that it was suspected and have said that it looked suspicious to the unaided eye, but conviction became strong as the examination progressed.

Cross-int. 47. You mean by its looking to you suspicious that it was so in the matter of double writing, do you not?

(De bene esse as above.)

Ans. It was obviously of deeper shade; the broad ink-marks were of uniform tint throughout their breadth, while in signature No. 1 they were paler in the central part, and the hair-strokes, instead of being of uniform lighter shade as compared with the heavy strokes, as they are in No. 1, were as dark in general as the heavy strokes; and these peculiarities are suggestive of double writing.

Cross-int. 48. And upon these grounds you entered upon the in-

vestigation, did you not, with the expectation that what you had heard about double writing was probably true?

(Question put de bene esse as above. Respondents renew their note that they do not admit such kind of examination, and claim that the examination carries with it all usual liabilities and rights; and desire that this should apply generally to all former and subsequent questions put de bene esse by plaintiff.)

Ans. I entered upon it with that suspicion, but with a purpose to see if there was any other explanation of the facts.

1026 Cross-int. 49. Have you read or had read to you any part of the depositions of respondents in this case before you testified?

Ans. No, sir.

Cross-int. 50. Have you had their contents or any part of them stated to you?

Ans. I have not.

Cross-int. 51. You mean to state this as distinctly, carefully, and truly as in regard to any other matter testified of by you, do you not?

Ans. If the question means to ask whether or not I have derived some information as to the case of the respondents through incidental conversation, I should say I doubtless have; but that the depositions, either in whole or in part, have been shown or read to me, I have not.

Cross-int. 52. With whom did you have such incidental conversation as to the case of the respondents?

Ans. Mr. Stetson and I have, as a matter of course, talked of the signatures in question; and though I do not remember particular statements as to what has been testified to, I have no doubt I have received some information of the kind referred to.

Cross-int. 53. And this upon each of the points on which you have been called by respondents to testify, have you not? If not, name any one point that is an exception.

Ans. The broad lines of No. 1, as compared with the broad lines of 10, and the causes of their differences; peculiarities of d in Howland; characteristics of A. Of these I do not remember to have heard what has been said by any witness, nor of the difference between the look of dye in the light and heavy strokes of No. 1, as contrasted with the look of pigment in No. 10, as explained in my direct examination.

Cross-int. 54. Do you possess any extraordinary skill in penmanship, or have you ever been a writing master?

Ans. I have taught the usual course in a country district school, but I may not claim any extraordinary skill.

Cross-int. 55. Have you ever been called into court as a witness in reference to the genuineness of signatures? If so, when, and in what case?

Ans. I have not; [but I have had signatures submitted to me by counsel, which signatures were the subject of litigation.]

(Plaintiff objects to part of the answer in brackets as not responsive.)

1027 Cross-int. 56. Who made the photographs you produced here?

Ans. They were furnished to me by Mr. Stetson. I do not know who produced them.

Cross-int. 57. You are not a photographer, and have not practised photography, have you?

Ans. I have practised photography.

Cross-int. 58. How long since, when, and where?

Ans. The question is answered in my direct examination.

Cross-int. 59. I repeat the question; will you state carefully and accurately.

Ans. Twenty-seven or eight years ago, when a teacher in Albany.

Cross-int. 60. Teacher of what; and to what extent did you practise it?

Ans. Teacher of mathematics and the physical sciences in the female academy at Albany, where I was at the same time partner with Mr. Cushman in taking portraits and landscapes as an employment. Most of the work was performed by Mr. Cushman; the science of the art, which was then in its infancy, devolved in a larger degree upon me. The establishment was maintained about a year.

Cross-int. 61. Photography, as known now, did not then exist, did it? The business then was taking daguerrotype portraits, was it not?

Ans. Photography, as its name indicates, is taking pictures through the aid of light. My business was chiefly in developing a new art of which daguerrotyping was one of the earlier illustrations.

Cross-int. 62. I repeat the question; please answer it directly.

Ans. Photography, as a general name, was not in use then, and daguerrotypy applies only to taking pictures on silvered plates by means of light, and is a branch of photography. The present modes of taking portraits and landscapes and copying pictures and writing, by means of light, are very various, and show the progress of photography.

Cross-int. 63. Since you ceased to have any relations to the college at the date you have mentioned, have you been travelling and temporarily stopping in various parts of the United States?

(Objected to as immaterial.)

Ans. I have occasionally been absent from Cambridge for purposes of business and pleasure.

Cross-int. 64. For how large a portion of the time?

1028 Ans. I spend about three months of each year at Shelter Island, N. Y.; I occasionally visit Providence, R. I.; New York city; Washington, D. C. I may, perhaps, therefore, be absent from Cambridge altogether four months in the year.

Cross-int. 65. You have been engaged in getting up patent safes during that time, have you not?

(Objected to as immaterial.)

Ans. No, sir. The investigation of the safe problem was made during my connection with the college.

Cross-int. 66. Prior to your examination in this case, state any in-

stance where you had examined any retouching in signatures or handwriting with a view to seeing whether the writer was or was not able readily to adjust the focus of the eye to the writing.

(Question is put de bene esse, and without waiving objections heretofore taken under the fifteenth direct interrogatory.)

Ans. I have no recollection of any prior instance.

Cross-int. 67. What examination did you make of the signatures to the original bills of sale; and where and how did you make it?

(Put de bene esse as above.)

Ans. I examined them all as handed to me individually by Mr. Stetson, at Cambridge, selecting the instances of imperfect writing, and examining them with the microscope.

Cross-int. 68. What did you observe in the retouching which indicated inability to adjust the focus of the eye as distinct from any imperfection which you observed which was in any way due to stiffness or unequal rapidity of motion or ill health or aged?

(Question put de bene esse as above.)

Ans. In the letter S in one of the signatures which I recall there are three attempts to commence the letter, the first of which is detached and about on the line where it should be; the second is a hair-stroke at the top of the S, made after the letter was finished, and as if the writer was not certain that the pen had shed ink in making the hair-stroke of the completed letter. I conceive the first stroke to have been made when the eye was at such distance that the writer did not distinctly see that any stroke had been made.

Cross-int. 69. Is that the only instance you can remember?

(De bene esse as above.)

Ans. There are others.

1029 Cross-int. 70. Please name them.

(De bene esse as above.)

Ans. There are the imperfect letters in Howland in one signature, in which the ink was imperfectly shed in the first writing and also in the second; and the writer seem to have been impressed that the defect had been corrected by the second writing when the ink had evidently made no more mark than in the first writing.

Cross-int. 71. In your two preceding answers do you refer to parts of the same signature, or to different signatures?

(De bene esse as above.)

Ans. Different signatures.

Cross-int. 72. How many are embraced in those answers as containing the imperfections you therein refer to?

(De bene esse as above.)

Ans. Two.

Cross-int. 73. And those imperfections must necessarily result from inability to adjust the focus of the eye and not from any accident of position or light or want of care, must they?

(De bene esse as above.)

Ans. The opinion I have expressed is the one I formed.

Cross-int. 74. Do you mean to say that in your opinion it could

not have resulted from any other cause than inability to adjust the focus of the eye?

(De bene esse as above.)

Ans. I mean to say that that seems to me to be the explanation.

Cross-int. 75. And that independent of the physical condition of the writer other than as to eyesight? I refer to the instances when you have attributed the defect to inability to adjust the focus of the eye.

(De bene esse as above.)

Ans. That is my opinion.

Cross-int. 76. Prior to this examination state any instance where you have examined retouching of handwriting or signatures for the purpose of determining how far the retouching had been affected by the age or the ill health—and whether such ill health was constitutional or not—of the writer.

(De bene esse as above.)

Ans. The most prominent case that occurs to me is that of my mother, who wrote me during the decline of her eyesight, until she was obliged to give up writing.

Cross-int. 77. Did you have occasion in that case to examine the writing to see whether any retouchings therein were or were not caused from inability to adjust the focus of the eye as dis-
1030 tinct from inaccuracies caused by declining health or weakness or stiffness of age?

(De bene esse as above.)

Ans. I noticed the connection between repeated marks and the defective vision and the time required to place the paper at proper distance.

Adjourned to 9.30 a. m., Thursday.

THURSDAY, *June 6th.*

Cross-examination continued:

Cross-int. 78. Before you decided that the retouching of the signatures in the bills of sale had been done by a writer affected with the disabilities referred to in your answer to the fifteenth direct interrogatory, had you been informed in regard to the health of Miss Howland or her habits of writing, or did the appearance of the retouching enable you without any such information to arrive at the conclusion therein expressed?

(De bene esse as above.)

Ans. I have no recollection of any information furnished me beyond the idea imbibed; I can't say now that the writer was advanced in years, and my opinion was formed wholly from personal examination of the writing.

Cross-int. 79. Was there ever any question as to the genuineness of what purported to be a signature of your mother's, where you made an examination of her writing and retouching for the purpose of ascertaining the genuineness or want of genuineness of her signature?

(Question put de bene esse as above.)

Ans. There was none.

Cross-int. 80. Before you made the examination which you have made in this case, what examination had you made where the genuineness of a signature was in controversy by superposition of signatures for the purpose of testing in that way the genuineness or want of genuineness of the signature in dispute?

(Question put as above and without waiving any objection as to the qualifications of the witness.)

Ans. I remember to have made such examinations in cases
1031 of signatures in bank-note counterfeiting and at the instance of counsel in papers the subject of litigation in court in Boston.

Cross-int. 81. State a single instance where you made such an examination as is enquired about in the last question. Give the name of the case or of any of the parties or any of the counsel or anything that will tend to show what that case was. (De bene esse as above.)

Ans. The instances in which I was consulted and gave my opinion were instances in which I was not called into court, and were confidential.

Cross-int. 82. Have you had shown you, in the examination which you have made in this case, any signatures to papers in this case other than the signatures of Sylvia Ann Howland to the papers you have before testified to, for the purpose of seeing how they covered by superposition, or for any other purpose? (Question de bene esse as last.)

Ans. I have not, if I understand the question.

Cross-int. 83. Have you made any examination of the signatures of Sylvia Ann Howland to 1, 10, and 15, F. W. P., by superposing the signature of No. 1 over No. 10 and 15? (De bene as above. Respondents object to question as immaterial.)

Ans. I have.

Cross-int. 84. Did you find in such examination that the signature to No. 1 when thus placed covered the signature to 10 and 15 as well as 10 and 15 covers 1? (De bene as above.)

Ans. 10 covers 1 better than 15 covers 1 and 10 covers 1, in that it is broader, slightly better than 1 covers 10. 1 covers 15 only with change of position, which is also true of 15 applied over 1; and as 15 is not so broad as 10, with this change of position even, it does not so perfectly conceal 1 as 10 does.

Cross-int. 85. Is sepia a pigment ordinarily used in the manufacture of writing ink? (Put de bene as above.)

Ans. It is not. I employed the expression in my direct examination in my description of the appearance of the shade under the microscope of the under writing in No. 10.

Cross-int. 86. Does this tint appear over the whole of the visible under writing, or how otherwise? (De bene esse as above.)

Ans. I could not answer how extensively without a more careful examination with a view to this point.

1032 Cross-int. 87. Does this tint appear in what you call upper

ink or writing, and, if so, over the whole, or how otherwise? (De bene as above.)

Ans. I have not observed it in the upper writing.

Cross-int. 88. Would the fact that there is an under and upper writing in this signature be apparent upon an examination by a glass of the power of one or two times magnifying, such as is used by watchmakers ordinarily? (De bene as above.)

Ans. It would.

E. N. HORSFORD.

WEDNESDAY, *June* 5, 1867.

Deposition of Charles Saunders Peirce.

I, Charles Saunders Peirce, of Cambridge, in the county of Middlesex, aged twenty-eight years, on oath say: I am employed upon the United States Coast Survey.

(And in answer to interrogatories in writing, by counsel for respondents, witness further says:)

Int. 1. What experience, if any, have you in minute and careful observations and measurements, and in the use of instruments of survey, measurements, etc.?

Ans. I have been accustomed to use surveying instruments, also the microscope in measuring, and balance—chemical balance. I have been accustomed to use the theodolite in the Coast Survey. I have been accustomed to use mathematical and other instruments, but it doesn't seem to be necessary to name any more. I think that's about enough.

Int. 2. Please to state whether you have examined the Exhibits F. W. P., No. 1, and F. W. P., 10, now before you, and the photographs in R. C. P., Book 1, Volume 2, Plates 14, 15, 16, and 17, and the originals of said photographs; and, if so, at whose direction and with what care and with what results.

(Objected to for form and on the ground that in the state of the pleadings in this case the question is not open to respondents.
1033 Also, that it does not appear that the witness is an expert in relation to the matters enquired of, and because it is not in rebuttal to the plaintiff's evidence, but merely cumulative testimony upon that part of the case where respondents have closed, and as otherwise incompetent; and complainant gives notice that any cross-examination of this witness will be de bene esse, and without waiving these objections.)

Ans. I have examined all, F. W. P., 1 and 10, and all the photographs named and the bills of sale; and perhaps one or two of the originals are not bills of sale. I have done so under the direction of Prof. Peirce; I have examined them with the utmost care I could exercise. I find that in placing the one above another, that is to say one enlarged photograph and another enlarged photograph, that the ones which purport to be duplicates are exactly alike, and I find that copies of Plates 14, 15, 16, and 17, which have been given

to me, one set being oiled and another set unoiled, are exactly like those four plates in R. C. P., Book 1, Volume 2.

I have found that the oiled copies which I had had no tendency to stretch which was sufficient to affect the results of my observations. I verified my observations by many accompanying observations from the original signatures upon the bills of sale, etc., marked R. C. P., exhibits, and have satisfied myself that the observations from the photographs were the same as those from the originals in their results.

I was directed by Prof. Peirce to observe and report as follows:

[He named thirty positions upon the magnified signature of Sylvia Ann Howland, viz: The two down-strokes of the S; the two down-strokes of the y; the down-stroke of each l; the down-stroke of the v; the down-stroke of the i; the two down-strokes of each a; the first long stroke of A which begins with a downward movement and then rises to the top of the letter.

The point of the A and the stroke which in some signatures proceeds a little way from that before entering in the long down-stroke of the A.

The long down-stroke of the A.

Both down-strokes of every n. The first flourish of H which begins with the downward movement. The first long downward stroke of the H.

The downward stroke of the o; the first downward stroke of the w; the second downward stroke of the w.

1034 The last stroke of the w which ends with a downward movement.

The two downward strokes of the d.

Taking every couple of the signatures I employed, and counting how many of these positions could be made to coincide or lie the one directly over the other while preserving the line of writing, the same or very nearly so, I found 5,325 coincidences among 25,830 pairs of positions, that being the whole number of such pairs which could be formed from the signatures employed.

I found that fifteen couples of signatures coincided in two positions, meaning by positions one of those lines which I enumerated just now. Ninety-seven (97) coincided in respect to three positions, one hundred and thirty-one in four, one hundred and forty-seven in five, one hundred and forty-three in six, ninety-nine in seven, eighty-eight in eight, fifty-five in nine, thirty-four in ten, seventeen in eleven, fifteen in twelve, twenty in more than twelve.

I found that F. W. P., Nos. 1 and 10, coincided in all thirty positions.

On the photographic plates that I have mentioned, there are forty-four different signatures. I was requested to examine them all, but as two of them seemed to have been affected by a break in the negative, I employed only the remaining forty-two.]

(Plaintiff objects to all of the answer included in brackets.)

Int. 3. Are you a member of the American Academy of Arts and Sciences?

Ans. Yes, sir.

Int. 4. In making your observations, what was the standard as to the sufficiency of a coincidence to be treated as such?

(Objected to as above.)

Ans. I considered that two lines coincided whenever they coincided as well as F. W. P., Nos. 1 and 10, in those same lines.

Cross-examination.

The witness being cross-examined by Francis Bartlett, esq., of counsel for plaintiff, testifies as follows:

Cross int. 1. Prof. Peirce is your father, is he not?

Ans. Yes.

Cross-int. 2. Where is your father now?

1035 Ans. He is in Cambridge.

Cross-int. 3. How long have you been connected with the Coast Survey?

Ans. I was appointed in the fall of 1859, I think, and there was six months, I think, in 1860, when my connection was interrupted.

Cross-int. 4. What have been the duties of your position in the Coast Survey?

Ans. During the first six months I was attached to the party which was occupied upon the primary triangulation of the coast of Maine, and my special duties were those of observing magnetical declination and special magnetical disturbances, also meteorological observations, and also very largely clerical; (that was the party of Prof. Bache;) in the following fall I was with the party on what is called the east coast of Louisiana, which was engaged upon secondary triangulation. My duties upon that party combined all the branches of that work. Since then I have not been in the field, but have been computing.

Cross-int. 5. Do I understand that the instrument used either in plain table-work or primary or secondary triangulation is the ordinary theodolite used by surveyors?

Ans. It is not precisely; the work of triangulation requires better instruments than the ordinary theodolite.

Cross-int. 6. You have made use of the word coincidence in your direct examination—aside from your explanation as referring to these signatures; what do you hold to be a coincidence of two lines?

Ans. I made my explanation with a view to explain a certain meaning I would give to the word coincidence; aside from that, an absolute mathematical coincidence is one signification of the word coincidence.

Cross-int. 7. In your examination of the signatures F. W. P., 1 and 10, did you not make use of photographs similar, according to your best judgment, to those on Plate 11, Book 1, Volume 1, R. C. P.?

Ans. As far as I can make any examination of these under this light and these circumstances generally, I should say those were similar to those I have used.

Cross-int. 8. Supposing the middle signature of that group to be a photograph of F. W. P., No. 10, and the lower one of F.

1036 W. P., No. 1, I understand you to say that F. W. P., 10, coincides with F. W. P., 1, there? Am I right?

Ans. No; I have not said anything that amounted to that.

Cross-int. 9. You have made use, during your direct examination, of certain notes; have you any objection to producing them and allowing the magistrate to identify them as an exhibit in this case?

Ans. I have no objection to do so except that I observe one thing omitted in these notes. I made it a condition that in shifting one photograph over another—in order to make as many lines as possible coincide—that the line of writing should not be materially changed. By materially changed, I mean so much changed that there could be no question that there was a difference in the general direction of the two signatures.

The examiner here identifies the notes, and they are annexed as an exhibit, marked R. C. P., X.

CHARLES S. PEIRCE.

Exhibit R. C. P., X.

Under the direction of my father Professor Peirce, I have made careful examinations of exhibits F. W. P. Nos. 1 and 10, and of the signatures of Sylvia Ann Howland photographed on plates 14, 15, 16, 17 (R. C. P. Book 1. vol. 2). I used unoiled photographs which I found by actual examination to be duplicates and exactly like said plates; and I had oiled duplicates which were better oiled and had not the tendency to stretch that those with said plates have. I also verified my observations by many accompanying observations from the original signatures of the bills of sale marked R. C. P., satisfying myself that the observations from the photographs were the same as those from the original I was directed by Professor Peirce to observe and report as follows:—He named thirty positions as indicated on the accompanying photograph and which are as follows:—

1 The first down-stroke of the S
2 The second down-stroke of the S
1037 3 The first down stroke of the y
4 The second down stroke of the y.
5 & 24 The down stroke of each *l*.
6 The down stroke of the v.
7 The down stroke of the i
8 and 25. The first down stroke of each small a
9 and 26. The second down stroke of each small a.
10 The long up stroke of the capital A
11 The stroke at the top of the capital A
12 The long down stroke of the capital A.
13, 15, and 27 the first down stroke of every *n*
14, 16, and 28 the second down stroke of every *n*.
17 The flourish containing the first down stroke of the H.
18 The second down stroke of the H
19 The third down stroke of the H.

20 The down stroke of the o.
21 The first down stroke of the w
22 The second down stroke of the w
23 The up stroke which completes the w.
29 The first down-stroke of the d
30 The second down-stroke of the d.

He also directed me to observe and report the number of coincidences of any of said positions, throughout the couples of said standard signatures. I found 5325 coincidences from or out of 25830 pairs of positions as above stated, and which is the whole number of pairs. I found that

15	couples of signatures coincided in	*two* positions
97		in 3
131		in 4
147		in 5
143		in 6
99		in 7
88		in 8
55		in 9
34		in 10

17 in 11, 15 in 12, twenty in more than 12. F. W. P. Nos. 1 & 10 coincided in all thirty positions.

1038 There were forty-four different signatures re-presented on these plates, and I was re-quested to examine them all. But as two of them seem to have been affected by a break in the negative, I only employed the remaining forty-two.

CHARLES S. PEIRCE.

THURSDAY, *June* 6, 1867.

Deposition of Benjamin Peirce.

I, Benjamin Peirce, of Cambridge, in the county of Middlesex, professor of mathematics in Harvard College, and Superintendent of the United States Coast Survey, on oath say: That I am fifty-eight years old.

(And in answer to interrogatories by T. M. Stetson, esq., of counsel for respondents, in writing, the witness testifies as follows:)

Int. 1. Please to state whether your studies and duties have given you experience in questions relating to the computations of chances and topics of kindred nature; and, if so, please to state concerning the same and the extent of the same.

(Objected to as leading—immaterial.)

Ans. I have had a very large experience in such computations. I am familiar with all the leading works upon the subject, and have made many original investigations upon them myself.

Int. 2. State whether you have examined the signatures to the documents now before you, marked respectively F. W. P., No. 1, and F. W. P., 10.

Ans. I have examined and carefully compared them.

Int. 3. State whether you have caused any examination and observation to be made by any one, under your direction, of original signatures of Sylvia Ann Howland, and photographic illustrations thereof; and, if so, by whom.

(Objected to as leading and immaterial.)

Ans. I have caused a series of examinations of these signatures and their photographs to be made by my son Charles S. Peirce,
1039 under directions which I gave him. He was directed to examine all those signatures and photographs that he could obtain or that were accessible to him.

Int. 4. State what directions you gave him.

(Objected to as above.)

Ans. I marked for him thirty lines, which I called characteristic lines, in the signature F. W. P., No. 1, of Sylvia Ann Howland. I directed him to observe the corresponding lines in all her signatures, to compare each couple of signatures by placing one over the other in such way as to most nearly coincide in his opinion, and report the number of coincidences of principal lines which he found in the various cases examined. I mean by principal lines, characteristic lines, using one term for the other by accident; the meaning in my mind being the same; having only one thing in view.

(Plaintiff's counsel objects to so much of the answer as states what the witness assumes to call characteristic lines, on the ground that he is not shown to be competent to testify as to such characteristics.)

Int. 5. State whether you have examined the deposition of Charles S. Peirce, now before you, in relation to the results of his observations and examinations, being the same taken before this examiner yesterday and now in his custody.

(Objected to by plaintiff's counsel as leading and seeking to introduce incompetent testimony.)

Ans. I have.

Int. 6. From the examinations thus made by you, and those reported by him in said deposition, state whether you have been able to form a judgment as to the genuineness of the signature to F. W. P., 10; and please to state your inquiries and results fully, and your judgment, if any you have formed, as to the genuineness of said signature.

(Objected to by plaintiff's counsel as leading and seeking to introduce incompetent testimony, and because the witness is not shown to be competent to answer any such inquiry.)

Ans. I have carefully examined the signatures F. W. P., No. 1, and F. W. P., 10, of Sylvia Ann Howland. I have placed them over each other and by the side of each other, and have compared their magnified photographs. The coincidence is extraordinary and of such a kind as irresistibly to suggest design, and especially the tracing of 10 over 1. There are small differences in every portion of the signatures, so that no letter of the one is precisely identical with
1040 that of the other; but the differences are such as to strengthen the argument for design suggested by the coincidences. The coincidences are manifestly those of position; while the differences

are those of form. This distinction is well marked and clearly defined, and it is the key to the whole problem. Coincidence of position is easily effected by design, and can be tolerably well accomplished by an unskilful hand. It especially belongs to the downward stroke, and is the more perceptible in proportion as this stroke is heavier, longer, and straighter. It involves a close agreement in the average position of the stroke, an agreement in its slant, and no extravagant divesity of curvature. But coincidence of form is exceedingly difficult and requires a command of nerve and muscle of which few persons are capable, in imitating the writings of others. It is most manifest in the shorter turns, the more abrupt and frequent changes of direction, and the lighter strokes. In the ordinary writing of signatures, a man may coincide with himself, to a partial extent, either in form or position, but complete coincidence throughout the whole signature is, I believe, quite unattainable, even by writers of the most fixed habits. The consideration of the question of form may be reserved for the chirographer whose province it is to study the delicate differences or resemblances of form in various handwritings. Its principles do not admit of being brought to a numerical standard, but must be applied with the artistic skill of an accomplished penman; whereas the question of position is purely geometrical, and its correct discussion requires the science and discipline of the geometer. It may be easy in the comparison of signatures to find partial coincidence of position to an extent embracing more than half the signature; and such a phenomenon might erroneously be regarded by an incompetent authority as an important approximation towards complete coincidence; but it is far otherwise. In a long signature, complete coincidence of position is a peculiar phenomenon which is impossible to occur in the ordinary course of writing, and is an infallible evidence of design. The mathematical discussion of this subject has never, to my knowledge, been proposed, but it is not difficult; and a numerical expression applicable to this problem, the correctness of which would be instantly recognized by all the mathematicians of the world, can be readily obtained.

The proposed signature must be analyzed into its characteristic lines. The safest and surest mode of performing this analysis
1041 is, to adopt for the characteristic lines all those which consist wholly or in part of a downward stroke. These lines must then be counted. Thus, in the case of the signature F. W. P., No. 1, of Sylvia Ann Howland, I find thirty such characteristic lines. As many signatures of the same name are then to be found as possible, and they are to be compared together in order to ascertain what I shall call the relative frequency of coincidence. This datum is the fundamental number which is the basis of computation.

Two of the given signatures are to be placed the one upon the other, so that they shall coincide in superposition as closely as possible. The number of coincidences of characteristic lines is to be counted, and its ratio to the whole possible number of coincidences is the relative frequency of coincidence. Thus, if one-half of all the characteristic lines coincide, the relative frequency is one-half.

Under my direction, the signatures of Sylvia Ann Howland, which have been introduced into this case, were submitted to examination by my son Charles S. Pierce, whose great accuracy in scientific investigations has been tried by me. He compared forty-two signatures, which gives eight hundred and sixty-one comparisons; hence, there are thirty times eight hundred and sixty-one or 25,830 different comparisons of lines. He obtained 5,325 coincidences, which gives about one-fifth as the relative frequency of coincidence.

Having ascertained the relative frequency of coincidence, I am prepared to state how often we can expect to find the signatures perfectly coinciding in position.

The characteristic lines may be labelled with the successive Nos. 1, 2, 3, etc., from left to right in the order of their writing. The relative frequency of coincidence expresses how often there is a coincidence in either of the characteristic lines; such as in line 1 for example. The product of the relative frequency into itself expresses how often the coincidence of a characteristic line 1 is combined with that of line 2; the cube of the relative frequency of coincidence shows how often there will be the simultaneous combination of the coincidences of the three first lines, and so on.

Finally, the relative frequency must be multiplied into itself as many times as there are characteristic lines to express how often there can be a complete coincidence in position of all the lines of the signature.

1042 In the case of Sylvia Ann Howland, therefore, this phenomenon could occur only once in the number of times expressed by the thirtieth power of five, or, more exactly it is once in (2,666) two thousand six hundred and sixty-six millions of millions of millions of times, or 2,666,000,000,000,000,000,000.

This number far transcends human experience. So vast an improbability is practically an impossibility. Such evanescent shadows of probability cannot belong to actual life. They are unimaginably less than those least things which the law cares not for.

The coincidence which is presented to us in this case cannot therefore be reasonably regarded as having occurred in the ordinary course of signing a name. Under a solemn sense of the responsibility involved in the assertion, I declare that the coincidence which has here occurred must have had its origin in an intention to produce it.

If coincidence is ever of any value as evidence, concerning form, figure, or face, it is valid here. And it is utterly repugnant to sound reason to attribute this coincidence to any cause but design.

But even here the statement of the case is not closed. There is still an impossibility to be piled upon the immense barrier which has been exhibited. The signatures which were compared together were all written upon ruled lines. The signatures F. W. P., No. 1, and F. W. P., 10, were not so written. Had they been so written, the improbability of coincidence would have been just that which I have given. An additional datum is required from observation, namely, the tendency to uniformity of level in the characteristic lines of

Sylvia Ann Howland's signatures when her writing was not guided by a ruled line. The means of obtaining this datum are meagre; nevertheless it is apparent from the irregular curvature of the lower lines of the few of her signatures which I have seen, written in this way, that her uniformity of placing her characteristic lines on a level was not so great as would be expressed by the number one-half. That is, it would not occur half the time with each characteristic line. But even were this the case, a complete uniformity in the level of all the characteristic lines would not occur once in two hundred millions of times.

This is another practical impossibility, which is quite independent of that previously obtained.

There is still to be introduced the improbability of having
1043 the two signatures at the same exact distance from the edge of the paper, which increases the improbability at least ten times, and probably a hundredfold.

The mode by which the coincidence of the signatures F. W. P., No. 1, and F. W. P., 10, was effected, was manifestly tracing. In tracing a signature it is impossible to do more than just hide the original signature by the tracing, and an inexperienced hand is likely to accomplish this.

When 10 is placed upon 1 it just hides it, with the exception of the dot of the i and a peculiar crook with which the word "Sylvia" terminates. But when 1 is placed upon 10, the ten is seen to protrude almost everywhere. This shows that the 10 was traced from 1, and not the reverse.

(Plaintiff's counsel object to the whole answer on the ground that it contains statements of supposed facts and speculations, or theories based thereon, or otherwise, by witness, which, so far as shown, witness is wholly incompetent to state truly or correctly.)

Int. 7. Bringing to your aid in answering the question every element and consideration within your reach, please state your opinion whether No. 10 is or is not a genuine signature.

(Plaintiff's counsel object to question as leading, seeking to introduce incompetent testimony, and because the witness is not shown to be competent to answer any such inquiry.)

Ans. My opinion is that No. 10 is not a genuine signature.

Int. 8. State the degree of confidence you have in that opinion.

(Objected to as last above.)

Ans. I have the utmost degree of confidence.

Int. 9. What was the object of the investigation made by Mr. Charles S. Peirce, and reported by him in the latter part of his second answer in his deposition aforesaid?

(Plaintiff's counsel objects as seeking to introduce incompetent testimony.)

Ans. That investigation was part of my directions. It was ordered by me in order to obtain as severe a test as possible from observation for the criticism of my mathematical deductions. He had telegraphed to me one-fifth as the observed relative frequency of coincidence when I was in Washington. (The plaintiff's counsel here ob-

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Having ascertained the relative frequency of coincidence, I am prepared to state how often we can expect to find the signatures perfectly coinciding in position.

The characteristic lines may be labelled with the successive Nos. 1, 2, 3, etc., from left to right in the order of their writing. The relative frequency of coincidence expresses how often there is a coincidence in either of the characteristic lines; such as in line 1 for example. The product of the relative frequency into itself expresses how often the coincidence of a characteristic line 1 is combined with that of line 2; the cube of the relative frequency of coincidence shows how often there will be the simultaneous combination of the coincidences of the three first lines, and so on.

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The coincidence which is presented to us in this case cannot therefore be reasonably regarded as having occurred in the ordinary course of signing a name. Under a solemn sense of the responsibility involved in the assertion, I declare that the coincidence which has here occurred must have had its origin in an intention to produce it.

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(Plaintiff's counsel object to the whole answer on the ground that it contains statements of supposed facts and speculations, or theories based thereon, or otherwise, by witness, which, so far as shown, witness is wholly incompetent to state truly or correctly.)

Int. 7. Bringing to your aid in answering the question every element and consideration within your reach, please state your opinion whether No. 10 is or is not a genuine signature.

(Plaintiff's counsel object to question as leading, seeking to introduce incompetent testimony, and because the witness is not shown to be competent to answer any such inquiry.)

Ans. My opinion is that No. 10 is not a genuine signature.

Int. 8. State the degree of confidence you have in that opinion.

(Objected to as last above.)

Ans. I have the utmost degree of confidence.

Int. 9. What was the object of the investigation made by Mr. Charles S. Peirce, and reported by him in the latter part of his second answer in his deposition aforesaid?

(Plaintiff's counsel objects as seeking to introduce incompetent testimony.)

Ans. That investigation was part of my directions. It was ordered by me in order to obtain as severe a test as possible from observation for the criticism of my mathematical deductions. He had telegraphed to me one-fifth as the observed relative frequency of coincidence when I was in Washington. (The plaintiff's counsel here ob-

ject to all testimony as to the contents of any writing not produced.) I had already used one-fifth in the computations which I had made at Washington. I had computed in how many cases coinci-
1044 dences of three lines and no more might be expected; in how many cases coincidences of four lines and no more might be expected; in the same way with five, six, seven, eight, nine, ten, eleven, and twelve. The result is as follows:

3	lines,	68	computed coincidences,	97	observed.
4	"	114	"	131	"
5	"	148	"	147	"
6	"	154	"	143	"
7	"	132	"	99	"
8	"	95	"	88	"
9	"	58	"	55	"
10	"	31	"	34	"
11	"	14	"	17	"
12	"	6	"	15	"

Undistributed cases, 41.

The column of "observed" shows the number of coincidences observed by my son; the computations were mine. My son had also 35 undistributed cases, including his first 15 of the two couples with his last twenty of his more than twelve cases.

This is a species of comparison familiar to mathematicians, and such a coincidence as the above would be regarded as quite extraordinary, and a sufficient demonstration that the true law of the case was embodied in the formula.

(Plaintiff's counsel here repeats the objection to the whole answer made to answer to sixth interrogatory.)

Int. 10. Are mathematicians in the habit of using diagrams or other methods of representing any law of numbers which could be applied to this case? If so, please furnish such illustrations.

(Objected to as irregular and incompetent.)

They are constantly in the habit of illustrating by diagrams. They regard the generalizing power of the eye as the best faculty for criticizing the law of numbers as expressed in formulæ. They especially use it in questions of probability, such as in life tables.

An illustration is here given. I produce a diagram called a diagram of the distribution of coincidences for the comparison of approximate computation with the results of observation in the matter of Sylvia Ann Howland's signatures.

(The diagram is annexed as an exhibit, marked R. C. P., Diagram Pierce.)

1045 At the bottom of the diagram the Nos. 0 to 30, inclusive, are written at equal distances; they represent the number of coincidences in the first column of the table in the answer to ninth interrogatory. At the left of the table are written the Nos. 10, 20, 30, and so on, up to 150; they represent the number of cases in the second and third columns of the table referred to. Above each of the numbers at the bottom of the diagram, and at a height determ-

ined by the numbers at the left of the table, two dots are made corresponding to the numbers in the columns two and three in the table referred to. The dots corresponding to column two are connected by a continuous black line, while the dots belonging to column three are connected by a dotted line. The comparison of these two lines is an obvious mode of comparing the observation with the computation, and verifying the correctness of the law embodied in the formula.

(Plaintiff's counsel here repeat the objection made to last preceding answer.)

Int. 11. When in this deposition you have used the phrase characteristic lines, have you or not meant the same thing represented by your phrase positions?

(Objected to as leading and incompetent.)

Ans. I don't remember to have used the word positions in that way in my deposition, though it is possible I may have done so by accident.

Int. 12. State whether your computations here have concerned any farther elements than the coincidences of these thirty positions. I do not refer to the computations in relation to departures from the horizontal, nor to those in relation to equality of distance from the margin.

(Objected to by plaintiff's counsel as leading and as above.)

Ans. They refer to nothing else.

Int. 13. State whether your computations in your ninth answer were or were not made before you were aware of the observations of Charles S. Peirce, stated also in that answer. I refer only to those stated in the parallel columns.

(Objected to for form and as immaterial.)

Ans. They were made before I was aware of the results of his observations. They stand in the attitude of predictions, and the observations are verifications.

Int. 14. By the use of the words "characteristic lines," in this deposition, have you or not meant any other quality of a line except its position? If so, what?

(Objected to as above.)

Ans. I meant its position entirely.

1046 Int. 15. Please refer to your eleventh answer and say whether there is any discrepancy between that answer and the last.

(Objected to as above and as being cross-examination.)

Ans. I perceive none whatever. In the eleventh question I understood that I was asked whether I had used position in the sense of line, while in the last I am asked whether I had used this word as the quality of a line in a particular case.

Int. 16. It is desired to know whether or not you intended to use the word characteristic in the sense which penmen attach to it, to wit, as designating a personal peculiarity in the writer.

(Objected to as last above.)

Ans. I had no regard whatever to a customary or technical use of

it by penmen. I adopted it as the easiest word accessible to me for the purpose for which I required a word to denote peculiarities of position.

Int. 17. To what class of traced signatures does your computation in this deposition have regard?

(Objected to for form, and because it does not appear there is any classification of such signatures.)

Ans. To tracings which are made without any change in the position of the paper from the beginning to the end of the writing.

Int. 18. As a student and teacher of science state whether or not, in your judgment, its principles and laws authorize the demonstration you have given, and require the conclusions you have stated.

Ans. They do authorize and require the conclusions I have given, and all the modes of investigation I have pursued. I can add such a sentence as this: This is just as certain as that all the practical operations of the Coast Survey are the results of profound scientific thought.

Cross-examination.

The witness then being cross-examined by F. Bartlett, esq., of counsel for plaintiff—the examination being stated to be de bene esse, and not waiving objections—testifies as follows:

Cross-int. 1. You have used the word coincide frequently; do you mean mathematical coincidence or mere mechanical covering?

Ans. I mean such coincidence as the good judgment of a competent observer would call such.

1047 Cross-int. 2. A line a quarter of an inch in width will cover one an eighth of an inch in width—do they coincide when placed over each other?

Ans. It is a purely fanciful question in this case. I do not see the necessity of any further answer. If my son had met such a case as that he would have referred it to me for decision.

Cross-int. 3. Approximating the width of these two lines, when would it be fair to say that coincidence showed itself?

Ans. Whenever sound judgment of a good observer said it did.

Cross-int. 4. Might not two observers differ in their ideas of coincidence; and, to get an accurate result, might not the use of a personal equation become necessary?

Ans. Two observers might undoubtedly differ, but two competent observers could not have differed enough to affect this result sensibly; as there was only one observer in the present case, there is no necessity for a personal equation to harmonize them. The object of a personal equation is to harmonize two observers with each other, not with any absolute standard of truth.

Cross-int. 5. Then the observed coincidences are matters of opinion, and must always be? Is that not so?

Ans. The observed coincidences were comparisons with given coincidences—the coincidences of Nos. 1 and 10—and there are few cases in scientific observation where there is so little room left for difference of opinion to affect the observation.

Cross-int. 6. But it is opinion, after all, is it not?

Ans. It is observation, and not a case to which the word opinion would apply, as that word is understood.

Cross-int. 7. Opinion follows the observation, though, does it not?

Ans. The question is to me obscure; but when I measure the length of a board and find it to be a foot long, I introduce into that observation opinion to the same extent, and no more than I introduce it in these observations of coincidences.

Cross-int. 8. You were not present and do not know of your own knowledge except as told you by your son, do you, what documents or photographs were examined by him?

Ans. I was present at the beginning of his observations, [and saw
1048 that he started right in his mode of observation, and that he perfectly understood what were the facts which I wished him to obtain.] (Clause in brackets objected to by plaintiff as irresponsive.) Beyond this what photographs he compared I only know from his own testimony.

Cross-int. 9. Your life has been spent, has it not, for the most part in mathematical studies, and in teaching the same, has it not?

Ans. It has.

Cross-int. 10. You are not an instructor in writing, and do not profess any peculiar skill in handwriting?

Ans. I am not, and do not.

Cross-int. 11. You are not, and never have been, have you, an engraver or lithographer?

Ans. I am not, and never have been.

Cross-int. 12. You have not practised the art of tracing, have you?

Ans. A very little, to find out what it consisted in, and what could be accomplished in tracing by an inexperienced hand.

Cross-int. 13. When did you so experiment?

Ans. The last time within about ten days; a long time ago I had done something of the kind, so that I had an idea of it.

Cross-int. 14. Have you ever been called as a witness to testify in regard to the genuineness of hand writing?

Ans. Only where there was no doubt.

Cross-int. 15. What do you mean by that?

Ans. In the ordinary course of business to testify to a signature that was not known to persons who had to use it in the way of business.

Cross-int. 17. But not in the case of questioned or suspected handwriting?

Ans. No.

BENJAMIN PEIRCE.

1049 [Minors must be so designated, and the names of their guardians given, if they have any. If any party is a married woman her husband's name must be given. The heirs-at-law and next of kin may be determined by reference to chapters 91 and 94 of the general statutes.]

To the honorable the judge of the probate court in and for the county of Bristol:

Respectfully represents Thomas Mandell, of New Bedford, in the county of Bristol, that Sylvia Ann Howland, who last dwelt in New Bedford, in said county of Bristol, died on the second day of July, in the year of our Lord one thousand eight hundred and sixty-five, possessed of goods and estate remaining to be administered, leaving as her only heirs-at-law and next of kin, the persons whose names, residence, and relationship to the deceased are as follows, viz: Hetty H. Robinson, of New York city and State—niece of said deceased. That said deceased left a will and codicil herewith presented, wherein your petitioner is named executor.

Wherefore your petitioner prays that said will and codicil may be proved and allowed, and letters testamentary issued to him.

Dated this seventh day of July, A. D. 1865.

T. MANDELL.

The undersigned being all the heirs-at-law and next of kin, and the only parties interested in the foregoing petition, request that the prayer thereof be granted without further notice.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Probate court.

To the heirs-at law, next of kin, and all other persons interested in the estate of Sylvia Ann Howland, late of New Bedford, in said county, deceased, greeting:

Whereas certain instruments purporting to be the last will and testament and codicil of said deceased, have been presented
1050 to said court for probate by Thomas Mandell, who prays that letters testamentary may be issued to him, the executor therein named, you are hereby cited to appear at a probate court, to be held at New Bedford, in said county of Bristol, on the fourth day of August next, at nine o'clock in the forenoon, to show cause, if any you have, against the same. And said Thomas Mandell is hereby directed to give public notice thereof, by publishing this citation once a week for three successive weeks, in the newspaper called the Daily Mercury, printed at New Bedford, the last publication to be two days, at least, before said court.

Witness Edmund H. Bennett, esquire, judge of said court, this tenth day of July in the year one thousand eight hundred and sixty-five.

A. S. CUSHMAN, *Register.*

I have served the above citation as therein ordered.

T. MANDELL.

BRISTOL, *ss:*

AUG. 4, A. D. 1865.

Then personally appeared the above-named Thomas Mandell, and made oath that the above return by him subscribed is true.

Before me,

T. M. STETSON,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

At a probate court holden at New Bedford, in and for said county of Bristol, on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty-five, by adjournment from the fourth day of said August:

On the petition of Thomas Mandell, of New Bedford, in the county of Bristol, praying that the instrument therewith presented, purporting to be the last will and testament and codicil of Sylvia Ann Howland, late of New Bedford, in said county of Bristol, deceased, may be proved and allowed, and letters testamentary issued to him, the executor therein named; and the heirs-at-law, next of kin, and all other persons interested, having been duly notified according to the order of court, to appear and show cause, if any they have, against the same; and after a hearing had of the party objecting thereto, and it appearing that said instruments are the last will and testament of said deceased, and were legally executed, and that said testatrix was at the time of making the same of full age and sound mind, and that said petitioner is a competent person to be appointed to said trust:

1051

U. S. Int. Rev. Stamps. $1,073.

It is therefore decreed that said instruments be approved and allowed as the last will and testament of said deceased, and letters testamentary be issued to said petitioner, he first giving bond with sufficient sureties for the due performance of said trust.

EDMUND H. BENNETT,
Judge of Probate Court.

BRISTOL, *ss:*

Probate court.

In the matter of the will and the codicil of Sylvia Ann Howland, late of New Bedford, in the county of Bristol, deceased.

Hetty H. Robinson, contestant.

And now comes Hetty H. Robinson, the heir-at-law of said deceased, and claims an appeal from the decree of the judge of the probate court, approving and allowing said will and codicil as the last will and testament of said Sylvia Ann Howland, and she files the following as the reasons of her said appeal:

First. That the said Sylvia Ann Howland, by reason of mental and bodily weakness and infirmity, was incapable and not competent to make a will at the times said will and codicil are supposed to have been made.

Second. That the said Sylvia Ann Howland being in feeble health and of weak mind was unduly, improperly, and illegally influenced by those about her in the matter, of making said testamentary writings, and the same ought not to be approved and allowed as the will and codicil of the said Sylvia Ann.

1052

Third. That the said will and codicil ought not to have been approved and allowed as the will of the said Sylvia Ann Howland, but the same should have been disallowed.

Fourth. That the said decree approving said will and codicil is erroneous and against law and right.

HETTY H. ROBINSON,
By her attorney, WM. W. CRAPO.

Filed Sept. 9, 1865.

Attest:
A. S. CUSHMAN, *Register.*

Supreme judicial court, November term, '65.

BRISTOL, *ss:*

HETTY H. ROBINSON, appellant,
vs.
THOMAS MANDELL, appellee.

And now at said term said appellant withdraws her appeal in said cause; and it is by the court

"Ordered and decreed, That the decree of the court of probate admitting to probate the last will and testament of Sylvia Ann Howland deceased, and the codicil thereto, and relating to the appointment of executor, be affirmed and the cause remitted to the probate court for further proceeding."

SIMEON BORDEN, *Clerk.*

A true copy of the original decree.

SIMEON BORDEN, *Clerk.*

Nov. 14, 1865.

1053 COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Probate court.

I, Austin S. Cushman, register of the probate court for said county of Bristol, having by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, hereby certify the paper hereto annexed to be true copies of papers appertaining to said court, and on file and of record in the office of said court.

In witness whereof, I have hereunto set my hand and the seal of said court this sixteenth day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] A. S. CUSHMAN, *Register.*

[5-cent int. rev. stamp.]

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Probate court.

I, Edmund H. Bennett, esquire, judge of the probate court within and for the county of Bristol, hereby certify that Austin S. Cushman, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court, and has by law the custody of the seal, and all the records, books, documents, and papers of or appertaining to said court; and that said certificate and attestation are in due form, and entitled to full faith and credit.

In witness whereof, I have hereunto set my hand this sixteenth day of February, in the year of our Lord eighteen hundred and sixty-seven.

EDMUND H. BENNETT,
Judge of Probate Court.

[5-cent int. rev. stamp.]

1054 This exhibit printed subject to plaintiff's exception.

I, EDWARD MOTT ROBINSON, of the city of New York, merchant, do hereby make, publish and declare this to be my *last will and testament*, that is to say:

"North Point" property to H. H. R.

First. I give and devise to my daughter Hetty Howland Robinson, absolutely and in fee simple, all of the real estate situate in the city of San Francisco, California, commonly known as the North Point Dock Warehouse, belonging to me.

$910,000 to H. H. R.

Second. I give and bequeath absolutely to my said daughter, Hetty Howland Robinson, the sum of nine hundred and ten thousand dollars, to be paid to her by my executors, in six months from the time of my decease.

$10,000 to H. A. B.

Third. I give and bequeath to Henry A. Barling, of the city of New York, a legacy of ten thousand dollars,

$10,000 to A. H. D.

to Abner H. Davis, of the same city, a legacy of ten

$1,000 to W. E. W.

thousand dollars, and to William E. Watson of New Bedford, Massachusetts, a legacy of one thousand dollars ($1,000,); which legacies respectively I direct to be paid in twelve months from my death. I also direct that the

Salaries of H. A. B. and A. H. D. to continue to Jan. 1, '66.

salaries of the said Henry A. Barling and Abner H. Davis, under their present employment by me, shall go on and continue to be paid up to the first day of January, eighteen hundred and sixty-six.

$10,000 to the town of South Kingston, R. I.

Fourth. I give and bequeath to the town of South Kingston, in the State Rhode Island, the sum of ten thousand dollars, to be paid to the proper authorities of said town, by my executors in eighteen months from my death; which sum, with such accumulation of interest as may accrue thereon, I direct to be applied by the said town of South Kingston to build and endow an institution for educational purposes for the benefit of the inhabitants of said town.

Remainder of the estate to be settled in trust for benefit of H. H. R. during her life.

Fifth. All the rest, residue and remainder of my estate, both real and personal remaining after the payment of my debts, after satisfying the bequests and disposi-

tions hereinbefore contained, I give, devise and bequeath unto Henry A. Barling and Abner H. Davis, of the city of New York, and Edward D. Mandell, of New Bedford, in the State of Massachusetts, as trustees, to be had and holden by them and their survivors and survivor of them upon the trusts following: that is to say, as to the real estate to collect and receive the rents, issues and profits thereon, and as to the personal estate, to invest, and keep invested the same, with power to call in and change the investments from time to time, such investments
1055 and reinvestments to be in such securities and property, and in such manner as to such trustees shall seem safe and prudent; and to continue so to hold the same in trust during the life of my said daughter Hetty Howland Robinson, and to apply the net rents, issues, profits, interests and income arising from the property embraced in such trust to the sole and separate use of my said daughter Hetty Howland Robinson, during her life, separate and apart from any husband she may marry, and free from the debts, control or interference of any such husband; such application to be of such income only from time to time as it shall accrue and be received, and not to be subject to any previous disposition or incumbrance by way of anticipation; and upon the death of my said daughter Hetty Howland Robinson, to convey, tranfer and deliver over the capital of such trust estate, real and personal, as the same shall then exist, to the issue of my said daughter Hetty Howland Robinson, if any issue she shall leave her surviving, in such shares and proportions as my said daughter Hetty Howland Robinson, shall appoint and direct by her last will and testament; and if she shall make no such direction or appointment, then to such issue in equal shares *per stirpes*, and not *per capita;* and in case my said daughter Hetty Howland Robinson shall leave no issue her surviving, then, upon her death, to convey, transfer and deliver over the capital of such trust estate, real and personal, as the same shall then exist, excepting four hundred thousand dollars thereof, hereinafter disposed of in such event, to such person or persons, and for such estates as my said daughter Hetty Howland Robinson, shall by her last will and testament direct or appoint; and in default of such direction or appointment, or so far as the same may not extend or be effectual, then to the person or persons who by the present laws of the State of New York would have taken the same as heirs-at-law and next of kin of my said daughter Hetty Howland Robinson, if she had died seized and possessed thereof intestate; and as to the said above-reserved four hundred thousand dollars of such trust estate, I give and bequeath the sum at the termination of the said trust upon such contingency of my said daughter's dying without leaving issue in manner following: that is to say, I give and bequeath one hundred thousand dollars thereof to my brother William A. Robinson, of Providence, Rhode Island, if he be then living, and if he be not living, then to the issue then living of said Wil-
1056 liam A. Robinson, in equal shares *per stirpes*, and not *per capita;* and one hundred thousand dollars thereof to my sister Annie A. Chase, of Salem, Massachusetts, if she be then living, and if she be not then living, then to the issue then living of said Annie

A. Chase, in equal shares, *per stirpes*, and not *per capita;* and one hundred thousand dollars thereof to my brother, Attmore Robinson, of South Kingston, Rhode Island, if he be then living, and if he be not then living, then to the issue then living of said Attmore Robinson, in equal shares, *per stirpes* and not *per capita ;* and the remaining one hundred thousand dollars thereof to my brother Sylvester C. Robinson, of Salem, Massachusetts, if he be then living, and if he be not living, then to the issue then living of said Sylvester C. Robinson, in equal shares, *per stirpes*, and not *per capita.*

Fifth. I give to the trustees of the trust above created, and the survivors and survivor of them, power to lease any of the real estate embraced in such trust, for any lawful term or terms, and likewise power to sell and convey any of such real estate.

And I will and direct that as to such part of my estate as at the time of my death shall be invested in ships, or interests in ships, it shall be at the option of said trustees, and likewise of my executors, in their discretion, when to sell the same ; and they may continue to hold and run any such ship or ships for the benefit, and at the risk and charge of my estate, for such time as to them may seem fit.

Sixth. It is my express wish and desire, that none of my mercantile obligations, or those of the firm of William T. Coleman & Company, lately dissolved, for which I am responsible as partner, should be allowed to be protested or dishonored ; but that the same shall, notwithstanding my death, be punctually met and paid when due ; and I authorize and direct my executors so to meet and pay the same, and to apply to such purpose, any of my estate which may be requisite therefor ; and I authorize them, if need be, so to pay such obligations in advance of my will being admitted to probate ; and direct that they shall be entitled to indemnity therefor, out of my estate.

Seventh. I appoint the before-named Henry A. Barling, Abner H. Davis and Edward D. Mandell to be executors of this my will, and I direct that the executors and trustees hereby appointed, shall be responsible severally each for his own acts and defaults, and not the one for the others or other.

1057 In testimony whereof, I have hereunto set my hand and seal the sixteenth day of March, one thousand eight hundred and sixty-five.

(Signed) EDW. MOTT ROBINSON. [L. S.]

The people of the State of New York to all to whom these presents shall come, or may concern, send greeting:

Know ye that we, having inspected the records of our surrogate's court, in and for the county of New York, do find that on the 30th day of June, in the year one thousand eight hundred and sixty-five, by said court, letters testamentary on the estate of Edward Mott Robinson, late of the city of New York, deceased, were granted and committed unto Henry A. Barling and Abner H. Davis, both of the city of Brooklyn, N. Y., the executors named in the last will and testament of said deceased, and that it does not appear by said records that said letters have been revoked.

In testimony whereof, we have caused the seal of office of our said surrogate to be hereunto affixed.

[SEAL.] Witness, Gideon J. Tucker, surrogate of our said county, at the city of New York, the 1st day of July, in the year of our Lord one thousand eight hundred and sixty-five.

JOHN T. CORNELL,
Clerk of the Surrogate's Court.

[5-cent int. rev. stamp.]

This exhibit printed subject to plaintiff's exception.

To all persons interested in the Estate of Edward Mott Robinson, deceased as Legatees, next of Kin, or otherwise :

Notice is hereby given, That the executors of the estate of said deceased, with the aid of appraisers, for that purpose duly appointed by the Surrogate of the county of New York, will, on the 25th
1058 day of August, inst., at ten o'clock in the forenoon of that day, at No. 161 Pearl Street, in the city of New York, in said county, proceed to make an inventory and appraisement of all the goods, chattels and credits of said deceased.

Dated this 18th day of August, 1865.

HENRY A. BARLING,
H. H. DAVIS,
Executors.

COUNTY OF NEW YORK, *Surrogate's Office, ss :*

Henry A. Barling, A. H. Davis, executors of the estate of Edward Mott Robinson, deceased, being duly sworn, says: That the annexed inventory is in all respects just and true ; that it contains a true statement of all the personal property of the said deceased, which has come to the knowledge of the deponent, and particularly of all money, bank-bills, and other circulating medium, belonging to the said deceased, and of all just claims of the said deceased against the deponent to the best of the knowledge of the deponent.

HENRY A. BARLING.
H. H. DAVIS.

Sworn this fifteenth day of September, 1865, before me.

JOHN H. WILSON,
Notary Public N. Y. City.

COUNTY OF NEW YORK, *ss :*

I, B. P. Fairchild, an appraiser, duly appointed by the surrogate of said county, do swear and declare that I will truly, honestly, and impartially appraise the personal property of Edward Mott
1059 Robinson, late of the county aforesaid, deceased, which shall be for that purpose exhibited to me, to the best of my knowledge and ability.

B. P. FAIRCHILD.

Sworn this twenty-third day of August, 1865, before me.

JOHN T. CORNELL,
Assistant Surrogate.

COUNTY OF NEW YORK, *ss.:*

I, Benjamin Ray, an appraiser, duly appointed by the surrogate of said county, do swear and declare, that I will truly, honestly, and impartially appraise the personal property of Edward Mott Robinson, late of the county aforesaid, deceased, which shall be for that purpose exhibited to me, to the best of my knowledge and ability.

BENJAMIN RAY.

Sworn this twenty-third day of August, 1865, before me.

JOHN T. CORNELL,
Assistant Surrogate.

A true and perfect inventory of all the goods, chattels, and credits which were of Edward Mott Robinson, late of the city of New York, deceased, made by the executors of the estate of said deceased, with the aid and in presence of Benjamin P. Fairchild and Benjamin Ray, they having been duly appointed and sworn as appraisers; containing a full, just, and true statement of all the personal property of the said deceased, which has come to the knowledge of the said executors of said estate, and particularly of all moneys, bank-bills, and other circulating medium belonging to the said deceased, and of all just claims of the said deceased against executors, and of all bonds, mortgages, notes, and other securities for the payment of money, belonging to the said deceased, specifying the names of the debtor in each security, the date, the sum originally payable, the indorsements thereon, with their dates, and the sum which, in the judgment of the appraisers, may be collectible on such security.

Upon the completion of this inventory, duplicates thereof have been made and signed at the end thereof, by the appraisers.

1060 *Inventory and appraisement of the Personal Estate of Edward Mott Robinson, deceased.*

Name and class.	Par.	Present value.
	$1,584,392 00	$940,917 50
Stocks, bonds, etc., received on division of assets of I. Howland, Jr., & Co	685,600 00	646,734 00
Interest in following vessels, whalers: "James Maury," etc., etc., etc.		163,350 00
Interest in the following vessels, merchant-ship "Hibernia," etc., etc., etc.,		150,750 00
Notes receivable	977,357 56	
Can be collected		730,000 00
Cash		184,283 64
Interest in firm of W. T. Coleman & Co. about		400,000 00
Cash from sale insurance scrip		2,065 93
Outstanding claims considered good		2,462,221 02
		$5,680,022 09

Debts considered doubtful 249,669 11
" " bad 434,255 69
Dated at New York, Sept. 15, 1865.

Defendants' exhibits not printed.

Thus referred to:

R. C. P., 1 to 51, inclusive, are bills of sale of shipping, a deed, and a power of attorney, signed by Sylvia Ann Howland. (By error in numbering, there was never any number 31.) See deposition of B. Irish.

R. C. P., 52. A signature of Sylvia Ann Howland, cut from her deed to ———, referred to in deposition of B. S. Anthony.

1061 R. C. P., 53. A paper with signature of Sylvia Ann Howland, referred to in second deposition of S. M. Howland.

R. C. P., 54. The deed from which R. C. P., 52, was cut, referred to in deposition of B. S. Anthony.

R. C. P., Book 1, Vol. I.

R. C. P., Book 1, Vol. II.

R. C. P., Books 2–33 inclusive.
There are books of photographic illustrations with riders, and are referred to in second deposition of A. S. Southworth.

R. C. P., Photograph 8.

R. C. P., Photograph 9.
Photographs by transmitted light, referred to in depositions of Elizabeth Penney and Dr. Jackson. Placed in "R. C. P., Book of Exhibits"—Plates 1 and 2.

R. C. P., Diagram 1, Horsford.

R. C. P., Diagram 2, Horsford.

R. C. P., Diagram 3, Horsford.

R. C. P., Diagram 4, Horsford.
Colored illustrations of signature to F. W. P., 10, referred to in deposition of Professor Horsford. Placed in "R. C. P., Book of Exhibits"—Plates 3, 4, 5, 6.

R. C. P. Diagram referred to in deposition of Charles S. Peirce. Placed in "R. C. P., Book of Exhibits"—Plate 7.

R. C. P., Diagram, Peirce. Diagram of computed and observed coincidences referred to in deposition of Professor Pierce. Placed in "R. C. P., Book of Exhibits"—Plate 8.

1062 UNITED STATES OF AMERICA, *District of Massachusetts, ss:*

Circuit Court of the United States.—In equity.

HETTY H. ROBINSON
vs.
THOMAS MANDELL *et als.*

I, Robert C. Pitman, of New Bedford, in said district, a special examiner agreed upon by the parties, and duly approved by said court, to take the testimony of witnesses for defendants in New Bed-

ford and Boston, in said district, as appears by an attested copy of the order of said court hereto annexed, under and in pursuance of the amended 67th rule in equity of the Supreme Court of the United States, hereby certify that under and by virtue of said agreement and appointment, I caused notice to be given by the counsel of record for the defendants to the counsel of record for the
1063 plaintiff of the time and place for the examination of the defendants' witnesses for such reasonable time as was fixed by my order and by consent of parties; and on the 29th day of August, A. D. 1866, personally appeared before me, at said New Bedford, David Thaxter, esquire, with Wm. W. Crapo and Oliver Prescott, esquires, of counsel for plaintiff, and Benjamin F. Thomas, Thomas D. Eliot, and Thomas M. Stetson, jr., of counsel for defendants, and a copy of the bill and answer in said cause was then and there produced and furnished me; and by agreement of parties I commenced taking the testimony of witnesses for defendants in said cause; and by agreement of parties and the appointment of the examiner, and pursuant to various agreements of parties and orders of court for the extension of time for the taking of testimony in the cause, I continued the taking of the same by successive adjournments, (at both New Bedford and Boston, the same counsel for respondents attending at both places, and Messrs. Sidney Bartlett, David Thaxter, and Francis Bartlett, esquires, appearing for complainant severally
1064 noted,) on the several days noted on the several depositions herewith returned until the sixth day of June, 1867, on which day it was agreed that the testimony was closed by order of court; and the testimony was accordingly closed, on the part of the defendants, by me on that day.

The defendants produced before me on the several days and times aforesaid, the following-named witnesses, viz:

Electa Montague.
Abner H. Davis.
Simpson Hart.
Edmund H. Bennett.
Fally B. Brownell.
Pardon Gray.
Charles R. Tucker.
Eliza H. Brown.
Sarah M. Howland.
Joanna Curtis.
Harriet S. Mosher.
Samuel A. Sisson.
Hetty H. Hussey.
1065 Sarah Ann Fish.
Amelia Lewis.
Frederick Brownell.
Thomas Mandell.
Benjamin Irish.
Albert S. Southworth.
John E. Williams.

Joseph E. Paine.
Solomon Lincoln.
Charles A. Putnam.
George Phippen, jr.
George N. Comer.
James B. Congdon.
William F. Davis.
Alexander C. Carey.
George G. Smith.
Albert S. Southworth, (again.)
Sarah M. Howland, (again.)
Benjamin S. Anthony.
John E. Gavitt.
Alvan Clark.
George A. Sawyer.
Elizabeth Penney.
1066 Lemuel Gulliver.
Charles T. Jackson.
Henry W. Benham.
John Prendergast.
Charles S. Pierce.
Eben N. Hosford.
Benjamin Pierce.

And at the request of the counsel of both parties, and upon my own determination I direct the examination to proceed by question and answer; and each of the afore-named witnesses, before giving his testimony, was by me duly and carefully cautioned and sworn, (except in those cases where persons were conscientiously scrupulous to taking an oath, and where it is noted that the testimony was on affirmation, and in such cases the witness solemnly and sincerely affirmed, under the pains and penalties of perjury,) to testify the truth the whole truth, and nothing but the truth in said cause. The examination took place before me, and in the presence of one or more of the respective counsel of record upon each side, and each
1067 of the depositions was by me taken down in writing (excepting a portion of the deposition of Alvan Clark, where a clerk was employed as noted and agreed to in the body thereof, by counsel,) in the presence of the witness and the respective counsel, and thereafter the same was by me carefully read over to the witness and signed in my presence and the presence of said counsel, and each of the witnesses were subjected to cross-examination and re-examination in the mode used in the common-law courts, at the time of the adoption of said amendment to said 67th rule. Any question objected to by either party is noted by me in the body of the deposition, and all agreements made by parties before me, rulings excepted to, or special matters stated to the court appear therein.

And now in final execution of my commission, as special examiner in this cause, I herewith transmit and now personally return all the aforesaid original depositions, verified by my proper signature there-

1068 on, to the clerk of said court to be filed of record as provided in said amended rule. And I also, for the same purpose return, as a part of said testimony, all the several exhibits connected with, attached to, and referred to in said several depositions and identified as therein named, and also a package marked "George C. Smith," containing 3 photographic slips, marked respectively "R. C. P., 5th photograph," "R. C. P., 6th photograph," and "R. C. P., 7th photograph;" also a package marked Joseph E. Paine, containing the several photographs marked "R. C. P., 1st photograph (a)," "R. C. P., 1st photograph (b)," "R. C. P., 2d photograph (a)," "R. C. P., 2d photograph (b)," "R. C. P., 3d photograph," "R. C. P., 4th photograph." Also certain bound volumes of illustrative exhibits, viz: volumes marked "R. C. P., Book 1, Vol. I," "R. C. P., Book 1, Vol. II" and R. C. P., Books 2 to 31, inclusive. Also "R. C. P., book of exhibits," all containing exhibits duly introduced in the testimony herewith returned and identified and referred to in the body thereof, and the same are thus returned, and not immediately connected with and attached to the said several dep-
1069 ositions, because of the impracticability thereof, and are returned under my personal direction for better convenience as herein set forth. I also return exhibits 1 to 30, inclusive, and 32 to 51, inclusive, identified in deposition of B. Irish.

I also herewith return a schedule of attendance and travel of witnesses before me.

Witness my hand this sixth day of August, A. D. 1867.

ROBERT C. PITMAN,
Special Examiner.

Circuit court of the United States, Mass. dist.

HETTY H. ROBINSON, in equity,
vs.
THOMAS MANDELL *et als.*

It is agreed in this cause that Robert C. Pitman, esq., of New Bedford, be appointed examiner to take the evidence of witnesses for defendants, in New Bedford & Boston.

BENJ. F. THOMAS, *for Def'ts.*
S. BARTLETT, *for Pl'ff.*

1070 A true copy of agreement filed Sept. 12, 1866.
Att:

JOHN G. STETSON, *Clerk pro tem.*

SEPT. 28, 1866.

UNITED STATES CIRCUIT COURT, *Massachusetts District, ss:*

HETTY H. ROBINSON, in eq.,
vs.
THOMAS MANDELL *et al.*

It is ordered in the above-entitled cause that Robert C. Pitman, esq., of New Bedford, be appointed special examiner to take the

evidence of witnesses for defendants in New Bedford and Boston, according to the terms of the agreement between the parties filed in the clerk's office, Sept. 12, 1866.

By the court:

JOHN G. STETSON, *Clerk pro tem.*

A true copy.
Att:

JOHN G. STETSON, *Clerk pro tem.*

1071 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Edward H. Green et ux., in equity, *vs.* Thomas Mandell et al., in this court determined.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at Boston, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] JOHN G. STETSON, *Clerk.*

[5-cent int. rev. stamp, canceled.]

1072 Know all men by these presents, that I, James Sturgis, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, merchant, am held and firmly bound unto Thomas Mandell, of New Bedford, in said commonwealth, merchant, as he is executor of the last will and testament of Sylvia Ann Howland, late of said New Bedford, deceased, Edward D. Mandell, George Howland the younger, and William A. Gordon, all of said New Bedford, as they are trustees and residuary legatees under the will of the said Sylvia Ann Howland, in the full and just sum of one thousand dollars, to be paid to the said Thomas Mandell, Edward D. Mandell, George Howland the younger, and William A. Gordon, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made I bind myself, my heirs, executors, and administrators, by these presents.

Sealed with my seals, and dated the twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas lately at a circuit court of the United States held at Boston within and for the district of Massachusetts, at the October term of said court, in the year one thousand eight hundred and sixty-eight, in a suit in equity depending in said court between Edward H. Green and Hetty H., his wife, against the said Thomas Mandell, Edward D. Mandell, George Howland the younger, and William A. Gordon, in their capacities as aforesaid, a decree was rendered against the said Edward H. Green and Hetty, his wife, and the said Edward H. Green and Hetty, his wife, having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said

Thomas Mandell, executor, and Edward D. Mandell, George Howland the younger, and William A. Gordon, trustees and legatees as aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Edward H. Green and Hetty, his wife, shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JAMES STURGIS. [L. S.]

Signed, sealed, and delivered in presence of—

FRANCIS BARTLETT.

Approved:

JOHN LOWELL, *District Judge*.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
Clerk U. S. C. C. Mass. Dist.